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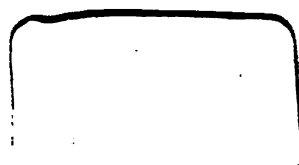
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U. S. Copyright Office

PART II*

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AMENDMENTS PROPOSED

TO THE

COPYRIGHT BILL

(S. 6330; H. R. 19853)

TOGETHER WITH OTHER

CRITICISMS AND SUGGESTIONS

RECEIVED AND NOTED TO DATE BY THE COPYRIGHT
OFFICE

DECEMBER, 1906

WASHINGTON
GOVERNMENT PRINTING OFFICE
LIBRARY BRANCH
1906

[* Part I of "Amendments Proposed" was printed November 22, 1906, and
can be had upon request.]

AMENDMENTS, SUGGESTIONS, AND CRITICISMS SUBMITTED.

I. AT THE HEARINGS ON THE COPYRIGHT BILL, DECEMBER 7, 8, 10, 11, 1906.

AMERICAN (Authors') COPYRIGHT LEAGUE, New York, N. Y. (See secs. 1: a, b, f, g; 6, 8: a; 13, 14, 18: b, c; 19, 20, 38.)
AMERICAN NEWSPAPER PUBLISHERS' ASSOCIATION, New York, N. Y. (See sec. 23: b.)
AMERICAN PUBLISHERS' COPYRIGHT LEAGUE, New York, N. Y. (See p. 103.)
BABCOCK (WILLIAM H.), Washington, D. C. (See secs. 9, 11, 13, 15.)
BOWKER (RICHARD ROGERS). See American (Authors') Copyright League.
BURKAN (NATHAN), New York, N. Y. (See secs. 1: g; 23: b; 33.)
CONNOR (W. W.), Chicago, Ill. (See sec. 1: g.)
CROMELIN (PAUL H.), New York, N. Y. (See secs. 1: g; 64.)
CUTTER (WM. P.), Northampton, Mass. (See sec. 1: b.) See also Library Copyright League.
DAVIS (G. HOWLETT), West Orange, N. J. (See secs. 1: g; 25, 63.)
FROMME (HERMAN), New York, N. Y. (See secs. 1: f; 5, 6.)
HEDGELAND (F. W.), Chicago, Ill. (See sec. 1: g.)
INTERNATIONAL BROTHERHOOD OF BOOKBINDERS. (See secs. 11, 13, 17, 30: d.)
INTERNATIONAL PRINTING PRESSMEN AND ASSISTANTS' UNION OF NORTH AMERICA. (See secs. 11, 13, 17, 30: d.)
INTERNATIONAL TEXTBOOK COMPANY (D. C. Harrington, Counsel) (See secs. 10, 14, 23, 32.)
INTERNATIONAL TYPOGRAPHICAL UNION. (See secs. 11, 13, 17, 30: d.)
JOHNSON (ROBERT UNDERWOOD) See American (Authors') Copyright League.
KEHR (CYRUS), Knoxville, Tenn. (See secs. 23, 25.)
LIBRARY COPYRIGHT LEAGUE. (See sec. 30: e.)
LIVINGSTONE (WILLIAM A.) See Print Publishers' Association.
LOW (H. N.), Washington, D. C. (See sec. 1: b.)
LUCKING (ALFRED), Detroit, Mich. (See sec. 32.)
MONTGOMERY (CHARLES P.), Treasury Dept. (See secs. 13, 22, 23: c, d; 29.)
OGILVIE (GEO. W.), Chicago, Ill. (See secs. 9, 14, 15, 16, 19, 22, 23: c; 25, 30: e; 45, p. 105.)
PETTIT (HORACE), Philadelphia, Pa. (See sec. 1: g.)
POUND (GEO. W.), Buffalo, N. Y. (See secs. 1: f; 15, 23: b, c; 32.)
PRINT PUBLISHERS' ASSOCIATION. (See secs. 3, 11, 13, 14, 21, 22, 34, 63.)
PUBLISHERS' ASSOCIATION OF NEW YORK CITY. (See sec. 23: b.)
PUTNAM (GEORGE HAVEN) See American Publishers' Copyright League.
SARGENT (S. HAROLD), Philadelphia, Pa. (See secs. 1: f, g.)
STEINER (BERNARD C.) See Library Copyright League.
SULLIVAN (J. J.) See International Typographical Union.
TAMS (ARTHUR), New York, N. Y. (See secs. 1: b, f; 5, 6.)
WALKER (ALBERT H.), New York, N. Y. (See secs. 20, 33.)
WELLMAN (HILLER C.) See Library Copyright League.
WILCOX (ANSLEY), Buffalo, N. Y. (See secs. 1, 23: b; 23-24.)

II. TO THE COPYRIGHT OFFICE.

Members of the new Copyright Committee of the American Bar Association who have submitted Informal Suggestions.

KNAUTH (ANTONIO), New York, N. Y. (See secs. 1: c, f, g, h.)
PARKINSON (ROBERT H.), Chicago, Ill. (See secs. 5: 1; 18, 19, 25, 30, 32.)
PRICHARD (FRANK P.), Philadelphia, Pa. (See sec. 18.)
RANDALL (HENRY E.), St. Paul, Minn. (See secs. 25, 32.)
ROGERS (EDWARD S.), Chicago, Ill. (See secs. 1: b; 10, 11, 13, 15, 18, 21, 24, 25, 26, 31, 32, 33, 34, 36, 38, 40, 63.)
WETMORE (EDMUND), New York, N. Y. (See secs. 14, 18.)

ADVERTISING CLUBS OF AMERICA (Hugh K. Wagner, Chairman Legislative Committee, St. Louis, Mo.) (See secs. 4, 14-15, 18, 23: d; 32, 52.)
BAIRD (HENRY CAREY), Philadelphia, Pa. (See sec. 16.)
FRINK OF BOSTON. (See secs. 14, 23.)
HOOD (E. G.), Nashua, N. H. (See sec. 1: f.)
LOEWY (BENNO), New York, N. Y. (See secs. 23, 24.)
SMITH (DELEVAN), Indianapolis, Ind. (See sec. 5.)
WALSH (CHAS. H.), Washington, D. C. (See p. 105.)
WHITMAN (EDMUND A.), Boston, Mass. (See secs. 5: a; 9, 13, 15, 19, 22, 23: b; 23, 29, 33; and p. 107.)

PREFATORY NOTE

After the first hearings on the Copyright Bill, the Senate Committee on Patents passed the following resolution (June 12, 1906) :

“Pending further hearings upon the bill (S. 6330; H. R. 19853), the Register of Copyrights is requested to keep record of the discussion of its provisions; and to receive in behalf of the committee as well as of the Copyright Office, suggestions for its amendment, whether in form or substance, and to digest these for convenient consideration by the committee.”

On November 22, 1906, the first compilation of “Amendments proposed,” was printed (131 pp.)*; on December 4th all further amendments and suggestions received up to that date were printed as “Addenda” (12 pp.). On December 6th such sections of the Substitute Draft submitted on behalf of the Melville Clark Piano Company, of Chicago, as were different from the official bill were tabulated and printed (27 pp.)

The amendments proposed during the second hearings on the Bill, December 7-11, and such suggestions and criticisms as the Copyright Office has received to date are now printed, arranged as before under the sections of the Bill dealt with, and the matter contained in the previous twelve pages of “Addenda” has been included.

A new text of the Melville Clark Piano Company draft and the full text of a substitute draft by Mr. Charles Porterfield were printed in the Appendix to the Report of the Hearings on the Copyright Bill, December, 1906*; their provisions are not included in this digest.

The suggestions and criticisms are necessarily separated from their context and supporting arguments, but citations have been made in all possible cases to the Report of the Copyright Hearings, so as to permit reference to such arguments as were submitted at the hearings and printed in full in the report.

Statements by the copyright committees of the American Bar Association and the Association of the Bar of the City of New York are, for convenience, separately printed.*

THORVALD SOLBERG

Register of Copyrights

December 29, 1906

* Copies of these and of the Report of the first Hearings on the Copyright Bill can be had upon request.

DEFINITE AMENDMENTS PROPOSED.

Sec. 1. Ansley Wilcox,—Change to read:

“Sec. 1. That the copyright secured by this Act shall include the sole and exclusive right—

(a) To make any copy of any work or material part thereof the subject of copyright under the provisions of this Act; or to make any abridgment, adaptation, variation, or rearrangement thereof. This subsection shall include translations into another language or dialect of any work which is capable thereof;

(b) To sell, distribute, exhibit, or let for hire, or offer or keep for sale, distribution, exhibition or hire, any copy of any such work, or any abridgment, adaptation, variation or rearrangement thereof; *Provided*, That this subsection shall not be deemed to prohibit anyone who has lawfully become the owner of a copy or copies of such work from selling, distributing, exhibiting or letting for hire such copy or copies.”

(c), (d), (e), (f), and (g) not changed.

(h), omit (included in (a)).

(Copyright Hearings, December, 1906, p. 148.)

Sec. 1 (a). American (Authors') Copyright League,—
Change by adding “any material,” to read:

“(a) For the purposes set forth in subsection (b) hereof, to make any copy of any work or *any material* part thereof the subject of copyright under the provisions of this Act, or to abridge, adapt, or translate into another language or dialect any such work, or make any other version thereof;” (Copyright Hearings, December, 1906, p. 402.)

Sec. 1 (b). American (Authors') Copyright League,—
Omit the words “or offer or keep for sale, distribution, exhibition, or hire,” to read:

“(b) To sell, distribute, exhibit, or let for hire any copy of such work;” (Copyright Hearings, December, 1906, p. 402.)

SUGGESTIONS AND CRITICISMS NOT ACCOMPANIED BY DEFINITE
PROPOSALS FOR PHRASEOLOGY.

Sec. 1. Antonio Knauth.

Subdivision (h) should go out.

Subdivisions (d), (e), and (f) should be confined to uses for profit, like subdivision (c), or at least for such uses as are stated in subdivision (b).

[Subdivision (g) criticised ... "I do not think that the matter is of great importance either way, but am of opinion that the movement in its favor is artificial."']

Sec. 1 (a).

Sec. 1 (b).

DEFINITE AMENDMENTS PROPOSED.

Sec. 1 (b). William P. Cutter.

That in subsection (a) of section one of the bill there be omitted the words "for the purposes set forth in subsection (b) hereof," and that subsection (b) be omitted from the bill. (Copyright Hearings, December, 1906, p. 75.)

Sec. 1 (b). H. N. Low,—Add provisos as follows:

“Provided, That such sole and exclusive right shall not continue to exist in any copy after it shall have been sold or assigned by the owner of the copyright therefor; and

Provided, That all similar copies of any work copyrighted under this Act shall be sold by the publishers of such copies at equal prices to all persons without discrimination, and that said publishers shall not place any restriction on the prices at which the purchaser of said copies shall sell or dispose of the same.” (Copyright Hearings, December, 1906, p. 114.)

Sec. 1 (b). Edward S. Rogers.

After subdivision (b) in section 1 there should be added the following:

“and to import copies of such works, subject in the case of books to the provisions of section thirty hereof,” so that said subdivision (b) will read as follows:

“(b) To sell, distribute, exhibit, or let for hire, or offer or keep for sale, distribution, exhibition or hire any copy of such work, and to import copies of such works, subject in the case of books to the provisions of section thirty hereof.”

Sec. 1 (b). A. Tams,—That the words “or let for hire” be eliminated, to read:

“(b) To sell, distribute, exhibit, or offer or keep for sale, distribution, exhibition, or hire, any copy of such work;” (Copyright Hearings, December, 1906, p. 375.)

Sec. 1 (c).

SUGGESTIONS AND CRITICISMS NOT ACCOMPANIED BY DEFINITE
PROPOSALS FOR PHRASEOLOGY.

Sec. 1 (b). .

Sec. 1 (c). Antonio Knauth, New York.

I am opposed to extending copyright protection by statute to oral deliveries, such as speeches, sermons, lectures, etc.

DEFINITE AMENDMENTS PROPOSED.

Sec. 1 (f). American (Authors') Copyright League,—
Add "for profit" and "or form of record," to read:

"(f) To publicly perform *for profit* a copyrighted musical work, or any part thereof, or for purpose of public performance or the purposes set forth in subsection (b) hereof to make any arrangement or setting of such work, or of the melody thereof, in any system of notation *or form of record.*" (Copyright Hearings, December, 1906, p. 402.)

Sec. 1 (f). Geo. W. Pound.

Strike out all of (f) after the word "thereof," line 10, and insert the following, to read:

"(f) To publicly perform a copyrighted musical work, or any part thereof: *Provided*, That the purposes of this Act be deemed not to include perforated music rolls for playing mechanical instruments or records used for the reproduction of sound waves, or matrices, or other appliances by which such rolls or records, respectively, are made; *Provided, however*, That in case the applicant for copyright shall file with his application for such copyright his consent that the subject thereof may be reproduced on or in records as used in connection with automatic playing instruments in whatever form they may be, upon payment of a royalty of two cents upon and for each and every reproduction thereof, then the copyright thereon granted shall be extended to and shall cover such mechanical reproductions." (Copyright Hearings, December, 1906, p. 319.)

Sec. 1 (f). Herman Fromme,—Strike out the word "arrangement," to read:

"(f) To publicly perform a copyrighted musical work, or any part thereof, or for purpose of public performance or the purposes set forth in subsection (b) hereof to make any setting of such work, or of the melody thereof, in any system of notation." (Copyright Hearings, December, 1906, p. 172.)

SUGGESTIONS AND CRITICISMS NOT ACCOMPANIED BY DEFINITE
PROPOSALS FOR PHRASEOLOGY.

Sec. 1 (f). E. G. Hood.

I consider it unconstitutional for any body of men to make a law which will deprive me of the right to do what I wish with a book which I may buy; after I have paid money for it that I shall not let my wife, or my boys, read it. And this is what it amounts to in regard to this music business. If I buy a hundred music books, there is no power under the good God's sun which shall say to me you have no right to sing this music in public, nor to give it away, nor to loan it to my brother, nor to rent it, nor to throw it in the fire. * * *

This music affair is very different from the drama, where there is a royalty on performances. You do not put a drama on the market, as you do music, and ask the public to buy.

Sec. 1 (f). Antonio Knauth.

I am quite opposed to extending copyright protection so as to prevent the public performance of a copyrighted musical work, or any part thereof, as provided by subdivision (f) of section 1.

Sec. 1 (f). S. Harold Sargent.

The right to publicly perform ordinary musical compositions, waltzes, songs, marches, etc., should not be restricted; but in the case of musical-dramatic or large religious or concert works (consisting, say, of more than two numbers) the holders of copyright should have full protection against public performances without their permission. (Copyright Hearings, December, 1906, p. 392.)

DEFINITE AMENDMENTS PROPOSED.

Sec. 1 (f). Arthur Tams,—Change to read:

“To publicly perform a copyrighted musical *dramatic* work, or any part thereof, or for purpose of public performance, or the purposes set forth in subsection (b) hereof.” (Copyright Hearings, December, 1906, p. 376.)

Sec. 1 (g). American (Authors’) Copyright League.

Cancel section 1 (g).

(Copyright Hearings, December, 1906, p. 402.)

Sec. 1 (g). Nathan Burkan,—Change to read:

“SEC. 1 (g). To make any record of any copyrighted musical or literary work or any part thereof, after this Act shall have gone into effect, in any system of notation, perforations, protuberances, depressions, impressions, or in any other system, manner or method whatsoever, used for reproduction to the ear by mechanical instruments or devices; to make any sound record of the same or any part thereof adapted to reproduce or cause any mechanical instrument to reproduce to the ear the sounds forming or identifying the same; to use, embody, or represent the same or any part thereof in any manner whatever, in any device adapted to reproduce or to cause any mechanical instrument to reproduce to the ear the same or any part thereof.” (Copyright Hearings, December, 1906, p. 389.)

Sec. 1 (g). Paul H. Cromelin,—Strike out paragraph (g), section 1, and its dependent clauses. (Copyright Hearings, December, 1906, p. 384.)

Sec. 1 (g). G. H. Davis,—Cancel. See Sec. 63.

Sec. 1 (g). F. W. Hedgeland.

Strike out paragraph (g) altogether. (Copyright Hearings, December, 1906, p. 30.)

Sec. 1 (g). Horace Pettit.

Add to Sec. 1 (g) at the end thereof the following:

“*Provided*, That nothing herein contained in clause (g) shall interfere with or supersede any rights under the patent laws: *And provided further*, That the owner or proprietors of the copyright as to the subjects included in

SUGGESTIONS AND CRITICISMS NOT ACCOMPANIED BY DEFINITE
PROPOSALS FOR PHRASEOLOGY.

Sec. 1 (f).

Sec. 1 (g). W. W. Connor.

Opposed to paragraph (g) and the suggested royalty feature. (Copyright Hearings, December, 1906, p. 371.)

Sec. 1 (g). G. Howlett Davis.

I hope to show how the passage of this Act (through paragraph (g), Sec. 1) will, first, discourage invention; second, restrict patent grants already held by inventors; third, provide authority to confiscate an inventor's physical property; fourth, to abrogate the inventor's constitutional rights, and, fifth, to create a monopoly which would be practically controlled by a few to the detriment of inventors and the public. (See "Arguments," Copyright Hearings, June, 1906, p. 96.)

I want the Constitution to stand as it is. It is not the construction Mr. Sousa puts on this word "writing" therein; it is not the construction that I put on it; but I followed this matter down, as an inventor. Every decision that has ever been made in this country and England, as I read it, has limited that word "writing" to mean some visible and readable writing. (See "Arguments," p. 102.)

As an inventor I approve of the bill as a whole and only seek to strike out therefrom those comparatively few words covering mechanical devices, the insertion of which vitally affects our present vested rights. (See "Arguments," p. 104.)

But, in my opinion, you will never be able to draw a better or more workable line of demarkation between the inventor and composer than that now set up by the Constitution, particularly if you follow the lines of the present bill as regards mechanical devices. (See "Arguments," p. 104.)

I have studied the laws right down to the last decision of the 25th ultimo, that of the court of appeals for the second circuit, and all confirm the contention which I have made here that the only incentive held up to the composer is a specific protection for his "writings,"

DEFINITE AMENDMENTS PROPOSED.

Sec. 1 (g). Horace Pettit—Continued.

this clause (g) shall grant license to any manufacturer upon the written request of any such manufacturer to make, sell, use, distribute or let for hire any of the said devices, contrivances or appliances upon tender of payment of a reasonable royalty for the same." (Copyright Hearings, December, 1906, p. 201.)

SUGGESTIONS AND CRITICISMS NOT ACCOMPANIED BY DEFINITE
PROPOSALS FOR PHRASEOLOGY.

Sec. 1 (g). G. Howlett Davis—Continued.

not on machines ... In no copyright act or law has there ever been introduced before—you will not find it anywhere—one word or clause or phrase, before this one, that covers mechanical devices. (*See "Arguments,"* p. 105–106.)

Well, "this bill affects the future," but has it the right to affect the future? Has it the right to change a situation which has existed since 1789? The bill proposes to change, not merely amend, the Constitution; therefore I challenge the authority of Congress to enact it. At present the composer has no contractual right as regards a machine, and Congress cannot give it to him.

Mr. Campbell. That is the very position we are trying to get at.

The Chairman. We cannot very well change the Constitution. (*See "Arguments,"* p. 107.)

Sec. 1 (g). S. Harold Sargent.

By what right the opponents of this measure seek to allow the manufacture and sale of copyrighted musical compositions, in whatever form, by any persons other than the holders of such copyright, it is difficult for any fair-minded person to conceive. Is it not the intent of the law that an inventor shall be protected as fully as possible against the theft of his invention whether it be a machine, a medical formula, or a piece of music? That the fact of a musical composition being published and offered for sale in the usual printed form should give to anyone the right to make and sell numberless copies of that composition simply because such copies differ in form or mechanical construction is absurd. According to this theory any person should have the right of duplicating the full name and ingredients of any patent medicine on the market and selling it broadcast throughout the land if he but use a different style of bottle from that of the owners of the patent. Therefore I most earnestly urge the passage of such laws or the adoption of such amendments as will effectually correct this wrong. (*Copyright Hearings, December, 1906, p. 392.*)

DEFINITE AMENDMENTS PROPOSED.

Sec. 3. Print Publishers' Association of America (Wm. A. Livingstone, president).

At the end of this section add: "The copyright upon composite works shall give to the proprietor thereof all the rights and privileges in respect thereto which he would have if each subject were individually copyrighted under this Act." (Copyright Hearings, December, 1906, p. 109.)

Sec. 5. Delevan Smith,—Include provision to read:

"Pictures, designs or illustrations in whatsoever form they may be reproduced, which are intended to illustrate works of the mechanical arts, or articles of commerce, or which may be designed to be used for purposes of advertisement or commercial publicity."

Sec. 5 (a).

SUGGESTIONS AND CRITICISMS NOT ACCOMPANIED BY DEFINITE
PROPOSALS FOR PHRASEOLOGY.

Sec. 4. Advertising Clubs of America (Hugh K. Wagner).

The proposed law will be unconstitutional, because it provides, by Section Four, for copyright for "all works" of an author, instead of merely for his "writings." Article III, Section Eight, of the Constitution of the United States only allows protection by copyright for "writings," and not "works." If, therefore, this bill is enacted into law, and some of you gentlemen produce artistic or literary matter of great value and obtain copyright protection therefor, under this law, which will later be declared unconstitutional, your copyrights will thus be invalidated, and, while you might have obtained valid copyright under the present law, yet, as the new law will supersede the old one, you will be obliged to claim protection under the new law, and you will lose all protection when the new law is declared unconstitutional.

The next objection that I would mention is that the proposed law is too absurdly broad, as one of its provisions would make an infringer of any one who in church should sing a copyrighted hymn.

Another objection to the proposed law is that Section Five leaves it uncertain whether or not any protection can be secured under it by way of copyright for engravings or lithographic productions. I am sure that many advertising men are interested in both.

Sec. 5. Herman Fromme and A. Tams.

In 4966 of the Revised Statutes insert the word "dramatic" after "musical," so as to read "musical dramatic productions." That will render that clause perfectly clear that it applies to theatrical performances, dramatic and musical, and not to religious music. And in section 5 insert the word "dramatic" after "musical." (Copyright Hearings, December, 1906, pp. 172, 375.)

Sec. 5 (a). Edmund A. Whitman.

Now, as to the use of the word "book." That word at the present time has been judicially defined, and practically anything is a book that has printing on it, even a single sheet of paper; but that is evidently not what is

DEFINITE AMENDMENTS PROPOSED.

Sec. 5 (a).

Sec. 5 (1).

Sec. 6. American (Authors') Copyright League,—Change to read:

“SEC. 6. That additions to copyrighted works and alterations, revisions, abridgments, dramatizations, translations, compilations, arrangements, or other versions of works, whether copyrighted or in the public domain, shall be regarded as new works subject to copyright under the provisions of this Act; but no such copyright

SUGGESTIONS AND CRITICISMS NOT ACCOMPANIED BY DEFINITE
PROPOSALS FOR PHRASEOLOGY.

Sec. 5 (a). Edmund A. Whitman—Continued.

meant by the word as used in the new Act, because, in the first place, it is differentiated from the word "periodical," and, in the second place, in Sec. 18 (c) it is differentiated from a number of other articles. The question is of great practical importance, for a vast number of questions will arise, not only as to the term of copyright but as to other so-called requirements. Take, for instance, Dr. Hale's "Man Without a Country." This originally appeared as a short story in a periodical, and some years after was published in book form. Was it a book when first published? Does the term of that copyright extend for fifty years under Sec. 18 (b) or for the life of the author and fifty years (under c)? Take, again, poems which have appeared from time to time in various publications, newspapers, or periodicals, what term of copyright does the author get when they are collected in one volume? Inasmuch as they have been published on their first appearance, there can be no new term of copyright beginning with the collection into book form.

In Sec. 16 the word "book" is used. Is there meant book in the technical sense or book in the broad sense of any printed article? In Sec. 13 book seems to be differentiated from periodical in the first line; but in the first line of the second paragraph does the word book include periodical, and if not, why not?

In Sec. 30, line 2, the word "book" is again used, but in what sense it is not quite clear. See also the use of the word "book" in Sec. 54, line 8.

Sec. 5 (1). Robt. H. Parkinson.

I do not regard commercial labels as the proper subject of copyright.

Sec. 6,

DEFINITE AMENDMENTS PROPOSED.

Sec. 6. American (Authors') Copyright League—Continued.

shall affect the force or validity of any subsisting copyright upon the matter employed or any part thereof, or be construed to grant an exclusive right to such use of the original works, *or to secure or extend copyright in such original works.*" (Copyright Hearings, December, 1906, p. 402.)

Sec. 6. Herman Fromme and A. Tams,—Strike out the word "arrangements," to read:

"SEC. 6. That additions to copyrighted works and alterations, revisions, abridgments, dramatizations, translations, compilations, or other versions of works, whether copyrighted or in the public domain, shall be regarded as new works subject to copyright under the provisions of this Act; but no such copyright shall affect the force or validity of any subsisting copyright upon the matter employed or any part thereof, or be construed to grant an exclusive right to such use of the original works." (Copyright Hearings, December, 1906, pp. 172, 375.)

Sec. 8 (a). American (Authors') Copyright League,—Omit "making and," to read:

"(a) Shall be living within the United States at the time of the first publication of his work, or shall first or contemporaneously publish his work within the limits of the United States; or" (Copyright Hearings, December, 1906, p. 402.)

Sec. 9. Geo. W. Ogilvie,—Change to read:

"SEC. 9. That any person entitled thereto by this Act may secure copyright for his work by publication thereof with the notice of copyright required by this Act; and such notice shall be affixed to each copy thereof published or offered for sale by authority *or with the consent of the copyright proprietor, and no copyright shall be valid if taken out in the name of one person in a foreign country and the name of another person in the United States.* In the case of a work of art or a plastic work or drawing, such notice shall be affixed to the original also before publication thereof. In the case of a lecture or similar work intended only for oral delivery, notice of copyright shall be given at each public delivery thereof."

SUGGESTIONS AND CRITICISMS NOT ACCOMPANIED BY DEFINITE
PROPOSALS FOR PHRASEOLOGY.

Sec. 6.

Sec. 8 (a).

Sec. 9. Edmund A. Whitman.

Sec. 9 provides a simple requirement for obtaining copyright, namely, to publish the work with notice of copyright attached. This, I understood, was the intention of all the parties to make the only requirement of copyright.

When we get to Sec. 17, however, we find that a number of other requirements are called for in the case of foreign books, such as the deposit of copies, registration and filing of affidavit, none of which are conditions precedent to the vesting of copyright in the case of domestic publications, but which seem clearly to be such in the case of foreign publications.

It is true that these things are in one sense of the word "requirements" for domestic works, but very clearly are not conditions precedent to vesting the copyright as they are to-day.

It is not clear from the terms of the Act what is the penalty for failure to comply with the statutory requirements. For instance, in Sec. 10 registration is *primâ*

DEFINITE AMENDMENTS PROPOSED.

Sec. 9.

Sec. 9, par. 1. William H. Babcock,—Change the first sentence to read:

“SEC. 9. That any person entitled thereto by this Act may secure copyright for his work by *registering the title thereof with the Register of Copyrights, as herein provided, such copyright being perfected by the publication of such work. The notice of copyright required by this Act shall be affixed by the publisher or publishers of such work to each copy thereof published or offered for sale by the said publisher or publishers or under the authority or control thereof in the United States.*” [Remainder of paragraph unchanged.] (Copyright Hearings, December, 1906, p. 387.)

Sec. 10, par. 1. Edward S. Rogers,—Change the word “requirements” to “directions,” to read:

“SEC. 10. That such person may obtain registration of his claim to copyright by complying with the *directions* prescribed in this Act; and such registration shall be *primâ facie* evidence of ownership.”

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Sec. 9. Edmund A. Whitman—Continued.

facie evidence of ownership, but it is not apparent what happens if the owner of the copyright neglects to register it. If the Act means that the certificate of registration issued by the Copyright Office is to be *primâ facie* evidence in Court, it fails to say so, and it has taken at least two decisions of the Supreme Court to determine the value of the certificates under the present law.

Another so-called requirement of the Act is the deposit of two copies with the Register of Copyrights; but I cannot find that the validity of the copyright is affected by failure to make this deposit, the only penalty being that provided in Sec. 15 of a fine for failure to deposit, and the provision that no action for infringement shall be brought until the deposit has been made, although that is worded as though it applied merely to a deposit within the first year.

Sec. 9, par. 1.

Sec. 10. D. C. Harrington, for the International Text-book Co.

It is therefore desirable, first, that the Act of Congress should state specifically the method or manner in which the composite book or one published in several sections shall be copyrighted and how it required that copies of the same shall be filed in the office of the Librarian of Congress. (Copyright Hearings, December, 1906, p. 152.)

DEFINITE AMENDMENTS PROPOSED.

Sec. 10, par. 2. Edward S. Rogers,—Cancel the words “the requirement of,” in the last sentence, to read:

“... But the privilege of registration secured hereunder shall not exempt the copyright proprietor from deposit of copies under section eleven herein where the work is later reproduced in copies for sale.”

Sec. 11. William H. Babcock,—Insert after “deposited” the words “by the publishers of said work,” and at the end the new sentence, to read:

“SEC. 11. That not later than thirty days (but in the case of a periodical not later than ten days) after the publication of the work upon which copyright is claimed, there shall be deposited *by the publishers of said work* in the Copyright Office or in the United States mail addressed to the Register of Copyrights, Washington, District of Columbia, two complete copies of the best edition; or if the work be a label or print relating to an article of manufacture, one such copy; or if a contribution to a periodical for which contribution special registration is requested, one copy of the issue or issues of the periodical containing such contribution, to be deposited not later than ten days after publication; or if the work is not reproduced in copies for sale, there shall be deposited the copy, print, photograph, or other identifying reproduction required by section ten above; such copies or copy, print, photograph, or other reproduction to be accompanied in each case by a claim of copyright. *If the said work be a bound book, the omission of the publisher to deposit the said copies within the time stated shall be a misdemeanor punishable by a fine of twenty dollars; but the copyright shall not be affected thereby if the author, on being duly notified of such omission, shall within thirty days after such notice supply the said copies.*” (Copyright Hearings, December, 1906, p. 387.)

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Sec. 10, par. 2.

Sec. 11.

DEFINITE AMENDMENTS PROPOSED.

Sec. 11. International Typographical Union, International Brotherhood of Bookbinders, and International Printing Pressmen and Assistants' Union of North America,—Amend by inserting after the word “edition” the words “which have been produced in accordance with the manufacturing provisions provided for in section thirteen of this Act,” to read:

“Sec. 11. That not later than thirty days (but in the case of a periodical not later than ten days) after the publication of the work upon which copyright is claimed, there shall be deposited in the Copyright Office or in the United States mail addressed to the Register of Copyrights, Washington, District of Columbia, two complete copies of the best edition, *which have been produced in accordance with the manufacturing provisions provided for in section thirteen of this Act; or if the work be a label or print relating to an article of manufacture, one such copy;*” [Remainder unchanged.] (Copyright Hearings, December, 1906, p. 188.)

Sec. 11. Print Publishers' Association of America (Wm. A. Livingstone, president).

Sec. 11. At the end of line 20 of the Senate Bill, after the words “best edition,” add the words “then published.” This will make the required deposit “two complete copies of the best edition then published,”—to read:

“Sec. 11. That not later than thirty days (but in the case of a periodical not later than ten days) after the publication of the work upon which copyright is claimed, there shall be deposited in the Copyright Office or in the United States mail addressed to the Register of Copyrights, Washington, District of Columbia, two complete copies of the best edition *then published;* or if the work be a label or print relating to an article of manufacture, one such copy; or if a contribution to a periodical for which contribution special registration is requested, one copy of the issue or issues of the periodical containing such contribution, to be deposited not later than ten days after publication” [etc.].

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Sec. 11.

DEFINITE AMENDMENTS PROPOSED.

Sec. 11. Edward S. Rogers.

It seems to me that Secs. 11 and 15 could well be consolidated and the section substituted for both be made to read as follows:

"After copyright has been secured by publication of the work with the notice of copyright, as provided in section nine hereof, there shall be deposited in the Copyright Office or in the mail addressed to the Register of Copyrights, Washington, D. C., two complete copies of the best edition thereof, or if the work be a label or print for an article of manufacture, one such copy; or if a contribution to a periodical, for which contribution special registration is requested, one copy of the issue or issues containing such contribution, or if the work is not reproduced in copies for sale, there shall be deposited the copy, print, photograph or other identifying reproduction required by section ten above, such copies or copy, print, photograph or other reproduction to be accompanied in each case by a claim of copyright. No action or proceeding shall be maintained for infringement of copyright in any work until the provisions of this section with respect to the deposit of copies of such work shall have been complied with. The Register of Copyrights may, upon specific written demand, require the proprietor of the copyright in any article to deposit the copies specified above, and after the said demand shall have been made, in default of the deposit of copies of the work within one month from any part of the United States except an outlying territorial possession of the United States, or within three months from any outlying territorial possession of the United States or from any foreign country, the proprietor of the copyright shall be liable to a fine of one hundred dollars."

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Sec. 11.

DEFINITE AMENDMENTS PROPOSED.

Sec. 13.

SUGGESTIONS AND CRITICISMS NOT ACCOMPANIED BY DEFINITE
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Sec. 13. The Print Publishers' Association of America.

We understand an amendment to section 13 of the proposed copyright bill will be handed in by the Typographical Union for the purpose of extending the requirements of American manufacture to other component parts of the book than that of the text. Without seeing such amendment, we of course can not judge of its scope, but we feel it necessary to protest against any extension of the manufacturing clause which would carry its restrictions beyond the text of the book, and which is already covered by section 13. (Copyright Hearings, December, 1906, p. 110.)

Sec. 13. Edmund A. Whitman.

I notice also in Sec. 13 both a book and periodical must be printed from type set in this country, but the affidavit is necessary only in the case of the book.

Another requirement seems to be that the type shall be set in this country, but the validity of the copyright is not necessarily affected by failure to do so. The only penalty is put upon the person who makes the false affidavit, and inasmuch as the printer is allowed to make that affidavit, it is impossible that he should forfeit any of his rights and privileges under the copyright, because he (the printer) hasn't any. It is very far from clear in the wording of Sec. 13 whether the author or publisher loses his copyright because his authorized agent or representative makes a false affidavit. With many works—such, for instance, as an encyclopedia—it would be good business to have a printer fined \$1,000, and pay it if thereby the requirements of type-setting in this country might be avoided.

In Sec. 13, paragraph 4, first line, it says: "Any person who for the purpose of obtaining a copyright" shall make false affidavit. There is nothing in the Act which specifically makes the obtaining of copyright depend upon any such affidavit. The first three lines of Sec. 9 are entirely independent of any such requirement. The affidavit either is or is not a condition precedent, and that should be stated clearly.

DEFINITE AMENDMENTS PROPOSED.

Sec. 13, par. 1. American (Authors') Copyright League,—
 Add "within the United States," and substitute
 "therein" for "within the limits of the United States,"
 to read:

"SEC. 13. That of a printed book or periodical the text of the copies deposited under section eleven above shall be printed from type set within the limits of the United States, either by hand or by the aid of any kind of type-setting machine, or from plates made *within the United States* from type set *therein*, or if the text be produced by lithographic process, then by a process wholly performed within the limits of the United States; which requirements shall extend also to the illustrations produced by lithographic process within a printed book consisting of text and illustrations, and also to separate lithographs, except where in either case the subjects represented are located in a foreign country;" [remainder of section unchanged.] (Copyright Hearings, December, 1906, p. 402.)

Sec. 13, par. 1. International Typographical Union, International Brotherhood of Bookbinders, and International Printing Pressmen and Assistants' Union of North America,—Change to read:

"SEC. 13. That of a printed book or periodical the text of the copies deposited under section eleven above shall be printed from type set within the limits of the United States, either by hand or by the aid of any kind of type-setting machine, or from plates made *within the limits of the United States* from type set within the limits of the United States, or if the text be produced by lithographic process, then by a process wholly performed within the limits of the United States, *and that the printing and binding of the said book have been performed within the limits of the United States;*" [Remainder of paragraph unchanged.] (Copyright Hearings, December, 1906, p. 188.)

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Sec. 13, par. 1. Chas. P. Montgomery of the Treasury
Department.

Mr. Sullivan has offered an amendment to section 13
requiring manufacture in the United States of plates, etc.
This amendment should be carried to section 30, or there
will be an irreconcilable conflict between the two sections.

DEFINITE AMENDMENTS PROPOSED.

Sec. 13, par. 2. International Typographical Union, International Brotherhood of Bookbinders, and International Printing Pressmen and Assistants' Union of North America,—Change to read:

“In the case of the book the copies so deposited shall be accompanied by an affidavit, under the official seal of any officer authorized to administer oaths within the United States, duly made by the person claiming copyright or by his duly authorized agent or representative residing in the United States or by the printer who has printed the book, setting forth that the copies deposited have been printed from type set within the limits of the United States or from plates made *within the limits of the United States* from type set within the limits of the United States, or, if the text be produced by lithographic process, that such process was wholly performed within the limits of the United States, *and that the printing and binding of the said book have also been performed within the limits of the United States.*” (Copyright Hearings, December, 1906, p. 188.)

Sec. 13, par. 2. William H. Babcock,—Change the words “person claiming copyright” to “publisher or publishers of said book.”

“In the case of the book the copies so deposited shall be accompanied by an affidavit, under the official seal of any officer authorized to administer oaths within the United States, duly made by the *publisher or publishers of said book* or by his duly authorized agent or representative residing in the United States” [etc.; remainder unchanged]. (Copyright Hearings, December, 1906, p. 387.)

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Sec. 13, par. 2.

Sec. 13, par. 2. William H. Babcock.

Change the words "persons claiming copyright" to "publisher or publishers of said book." Very often the author is the "person claiming copyright," but the publishers alone know just where the printing is done. My latest book was printed under contract with the publishers (I think) in Watertown, N. Y. But I can't swear that it wasn't shipped over the lake to Toronto. Why make a man swear when his information must be hearsay or nothing? If anyone must swear, let it be the man who knows. (Copyright Hearings, December, 1906, p. 387.)

DEFINITE AMENDMENTS PROPOSED.

Sec. 13, par. 3. Edward S. Rogers,—To read as follows:

“Any person who for the purpose of obtaining registration of a claim to copyright shall be knowingly guilty of making a false affidavit with respect to any of the facts required to be stated shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one thousand dollars.”

Sec. 13, par. 4. International Typographical Union, International Brotherhood of Bookbinders, and International Printing Pressmen and Assistants' Union of North America,—Change to read:

“Such affidavit shall state also the place within the United States, and the establishment or establishments in which such type was set or plates were made or lithographic process or printing and binding was performed and the date of the completion of the printing of the book or the date of publication.” (Copyright Hearings, December, 1906, p. 188.)

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Sec. 13, par. 3. Edward S. Rogers.

The paragraph beginning "such affidavit," etc., should, I think, follow the second paragraph after the words "United States." This seems the logical place for this provision. As it is, the requirements as to what the affidavit shall contain are split, and between the sections specifying the contents of the affidavits is the provision for a penalty for making a false affidavit.

After the word "obtaining" in the paragraph beginning "Any person," etc., on page 6, should, I think, be inserted the words "registration of a claim to." The words "as to his having complied with the above conditions," I think, should be made to read "with respect to any of the facts required to be stated." The words "and all of his rights and privileges under said copyright shall therefore be forfeited," I think, should be omitted. If copyright is to depend solely on publication and the requirements of deposit are not fundamental and things on which the validity of the right conferred are to depend, I do not think that the making of a false affidavit as to non-essential facts ought to forfeit the right. While, of course, the making of false affidavits is to be discouraged, still it seems as if the provisions for a fine are sufficiently drastic.

Sec. 13, par. 4.

Sec. 14. Print Publishers' Association of America
(W. A. Livingstone, president).

Sec. 14, par. 1. Both for ourselves and also for the Photographers' Association, whose delegates were compelled to leave and have requested us to speak for them, we feel we must reply to another criticism on the "notice" provided by the Bill. The Committee was asked to make the "notice" in works of art "uncovered" as well as "accessible." The imposition of this new condition would not only greatly embarrass us in certain cases but might also

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Sec. 14. Print Publishers' Association of America—
Continued.

lose us copyrights in others. Delicate etchings, engravings, and special photographs are published in cut-out mats and flap covers which lift up. Anyone wishing to see the "notice" can do so with ease by merely lifting up the mats or covers, and yet such notice might be held to be technically covered. So also a miniature in a metal frame having a removable metal back. The frame back can be lifted out with ease and the notice found stamped on the back of the miniature (which is the only safe place to preserve it), and still the notice is "covered," although perfectly "accessible." "Accessible" fully covers all reasonable requirements. It is defined as "easily found." What more can be reasonably asked of the author or publisher than a notice "easily found"?

This addition to the notice requirement is not only objectionable but illustrates again how a seemingly small and unimportant addition can cause decided harm. The terms evolved from the conferences were tested by many practical cases arising in daily business in the experience of practical men, and we respectfully urge extreme caution in any departure from them.

Likewise the reason for eliminating the date is not to conceal the date of copyright but to avoid impairment of commercial value by defacement (as much as possible); to mitigate risk in applying "notice"; and to reduce the cost of application of the notice itself. The increased cost of the application of date alone to a particular member of our association is not less than two thousand dollars per year.

Sec. 14, par. 1. Frink of Boston.

The notice of copyright should be made as simple as possible; there should certainly not be any addition to the notice now required, and so far as the form required is concerned the original draft of the bill is good. * * *
There is no reason why the date should appear. * * *
It is not the general public who are even interested to know the date.

DEFINITE AMENDMENTS PROPOSED.

Sec. 14, par. 1. Geo. W. Ogilvie,—Change to read:

“SEC. 14. That the notice of copyright required by section nine shall, *in books, pamphlets, magazines and other forms of printed matter consist of the present form and the notice of copyright on other articles may consist of either of the foregoing forms or of the word “Copyright,”* or the abbreviation “Copr.,” or, in the case of any of the works specified in subsections (f) to (l), inclusive, of section five of this Act, the letter C inclosed within a circle, thus: ©, accompanied in every case by the name of the author or copyright proprietor as registered in the Copyright Office; or, in the case of works specified in subsections (f) to (l), inclusive, of section five of this Act, by his initials, monogram, mark, or symbol, provided that on some accessible portion of the work or of the margin, back, permanent base or pedestal thereof, or of the substance on which the work shall be mounted, his name shall appear. But in the case of works in which copyright is subsisting when this Act shall go into effect, the notice of copyright may be either in one of the forms prescribed herein *as applied to the various articles copyrighted* or in one of those prescribed by the Act of June eighteenth, eighteen hundred and seventy-four.”

Sec. 14, par. 2. Geo. W. Ogilvie,—Change to read:

“The notice of copyright shall be applied, in the case of a book or other printed publication, upon its title-page or the page immediately following, or, if a periodical, either upon the title-page or upon the first page of text of each separate *article or* number or under the title heading; or if a work specified in subsections (f) to (l), inclusive, of section five of this Act, upon some accessible portion of the work itself or of the margin, back, permanent base or pedestal thereof, or of the substance on which the work shall be mounted.”

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Sec. 14, par. 1. D. C. Harrington, for the International Text-book Co.

With regard to the notice of copyright: The question has arisen in the company's business in which other parties have copied from its copyrighted instruction papers and books. At first it only put on the second edition the date of the last copyright, and the parties who were sued for infringing on the copyright made the claim that by reason of the omission of the date of the first copyright that it became public property. Some of the text-books on copyrights state that if all the dates are not put in it is lost and the copyright privilege is lost, and that the book becomes public property as to all but the additions and alterations. In one case in New York I succeeded in sustaining our contention that one notice was sufficient, relying upon the case of *Lawrence v. Dana*. I suggest, however, that it would be advisable, perhaps, to state in the notice of copyright that no date of copyright need appear and that the publishing of revised editions with alterations, corrections, and additions to it and giving the notice of copyright by the name of "Copr." or "C." inclosed within a circle followed by the name of author or copyright proprietor as registered in the Copyright Office will be sufficient notice to maintain the copyright property not only in the revised book, but in the original book or books of which it is a revised copy. (Copyright Hearings, December, 1906, p. 153.)

Sec. 14, par. 2. Frink of Boston.

Regarding the place where the notice should be put, I think there is justice in the suggestions offered that it should appear on some uncovered part, where it can be plainly seen by anyone looking for it.

Sec. 14. Edmund Wetmore.

The mark on pictures, etc., ought not only to be accessible but visible, otherwise it might be accessible but covered up.

DEFINITE AMENDMENTS PROPOSED.

Sec. 14, par. 3. American (Authors') Copyright League
(Robert Underwood Johnson, secretary).

Sec. 14. The next amendment we propose is in line 3, page 11, section 14, to insert the words "or periodical" after the words "In a composite work," so that the sentence may read:

"In a composite work *or periodical* one notice of copyright shall suffice." (Copyright Hearings, December, 1906, pp. 95, 402.)

Sec. 14, par. 3. Geo. W. Ogilvie,—Change to read:

"In a composite work one notice of copyright shall suffice *unless the composite work shall consist of matter covered by two or more copyrights, in which case all notices shall appear.*"

Sec. 14. Geo. W. Ogilvie,—Add at the end of section 14:

"*Except as provided for in section fifteen*, no person shall maintain an action for the infringement of his copyright unless he shall give notice thereof by inserting in the several copies of every edition published, on the title-page or the page immediately following, if it be a *magazine, periodical* or book, the following words, viz: 'Entered according to Act of Congress, in the year , by A. B., in the office of the Librarian of Congress, at Washington;' or, at his option, the word 'Copyright,' together with the year the copyright was entered, and the name of the party by whom it was taken out; thus: 'Copyright, 19 , by A. B.' "

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Sec. 14, par. 3.

Secs. 14-15. Advertising Clubs of America (Hugh K. Wagner).

The last objection that I shall mention, and one which I think is highly objectionable from the standpoint of advertising men, is the proposition of the new law to change the requirements regarding the affixation of the copyright notice to copyrighted matter. One of the wisest and best provisions of the present law, in my opinion, is that it requires a certain notice to be attached to everything that is copyrighted, stating the fact that it is copyrighted, the year when the copyright began to run, and the name of the person by whom the copyright was obtained. With this notice on an article, the public is warned not to use it and at the same time informed when the period will terminate, after which it is free for public use. This notice of the date of the copyright under the present law, coupled with the fact that it is definitely known that the term of the copyright is for twenty-eight or forty-two years, enables the public at the expiration of the period of monopoly to avail itself of the matter which then becomes open to the public, in accordance with the intention of the Constitution of the United States, which provides for protection to authors for their productions for "limited times." These advantages are

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Secs. 14-15. Advertising Clubs of America—Continued.

done away with by the proposed change in the law, not only by making the term of the copyright uncertain and practically unascertainable, as before pointed out, but, in addition, by allowing the notice of the copyright to be most meager and by making it unnecessary to state the year in which the copyright was effected, the one word "Copyrighted" or the abbreviation "Copr." being accepted as satisfactory notice of copyright. I submit that this is a provision of the new law which is and must be most obnoxious and objectionable to advertising men, as is, also, another and most preposterous provision of the proposed new law, that it shall not be necessary to put the copyright notice upon every article of copyrighted subject-matter, but only upon "the bulk of the edition." The bulk of the edition might otherwise be described, I suppose, as fifty-one per cent. of it, and all of the individual constituents of the remaining forty-nine per cent. would be circulating around the country to deceive and mislead well-meaning advertising men into thinking that they represented uncopyrighted matter which any one would be at liberty to use. To the astonishment, as well as regret, of the advertising man, he would find that, after having in perfect good faith adopted some picture or other matter adapted to advertising use, and after having spent a large amount of money in preparing tasteful advertisements embodying same, the owner of the copyright, who had put the notice on "the bulk of the edition" would descend upon him with ruinous litigation, seeking drastic pecuniary penalties, and damages, also, and with a criminal prosecution, for, among the other anomalies of this proposed law, is that, while securing the copyright proprietor in his property with an abbreviated notice, which omits the date of copyright, and, even though such notice be affixed to only "the bulk of the edition," yet, on the other hand, the same law proposes severer pecuniary punishment for the infringement, and, for the first time in the history of copyright law, makes the infringement of a copyright a criminal offense.

DEFINITE AMENDMENTS PROPOSED.

Sec. 15. William H. Babcock,—Add to Sec. 9 the following paragraph:

“In the case of a book the omission of such notice from any copy thereof shall be a misdemeanor on the part of the publisher or publishers punishable by a fine of not less than one hundred dollars; but such omission shall not in anywise affect the copyright, provided the author shall not have explicitly authorized such omission, and provided, further, that any title to said copyright or any part thereof, legal or equitable, shall be the property of said author at the time of such omission or of such punishment.” (Copyright Hearings, December, 1906, p. 387.)

Sec. 15. Geo. W. Pound.

On page 11, line 20, after the word “copyright,” insert “during such period only,” the proviso (par. 1) to read:

“*Provided*, That in such case no action shall be brought for infringement of the copyright during such period only until such requirements have been fully complied with.” (Copyright Hearings, December, 1906, p. 316.)

Sec. 15. Geo. W. Ogilvie,—Add at end of paragraph 1:

“in the case of a resident of the United States or one subject to the jurisdiction of its courts, and shall forfeit the copyright in the case of a foreigner or those not subject to the jurisdiction of its courts.”

Sec. 15. Geo. W. Ogilvie,—Change paragraph 2 to read:

“Where the copyright proprietor has sought to comply with the requirements of this Act as to notice and the notice has been duly affixed to the *major portion of each or of all editions issued*, its omission by inadvertence from a particular copy or copies, though preventing recourse, *except as herein provided*, against an infringer *who can produce such a copy*, shall not invalidate the copyright nor prevent recovery for infringement against *any other person or persons* who after *subsequent* notification of the *existence of a copyright* begins an undertaking to infringe it; and in the case of publications issued *subsequent to the passage of this Act* it shall be the privilege

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Sec. 15. Geo. W. Pound.

* * * In Sec. 15, page 11, after the word "copyright," line 20, insert "during such period only," the thought there being to prevent actions for infringement for publication during the period of time in which a copyright might not have been perfected. It simply provides here that the action might not be brought. (Copyright Hearings, December, 1906, p. 316.)

Sec. 15. Edward S. Rogers.

The paragraph beginning "Where the copyright proprietor," etc., should be made a part of and inserted at the close of section 14. In my judgment, all the provisions with respect to notice should be found in one place. (*See also* section 11.)

Sec. 15. Edmund A. Whitman.

Sec. 15 provides for the deposit within a year if by reason of any "error or omission" the deposit has not been made in 30 days. It strikes me that the words "error or omission" includes every possible excuse which the publisher could give, even that of an intentional failure to deposit, so that under the Act as I read it a publisher could intentionally withhold his deposit for a year. It seems to me what you mean is "accident or mistake." My general criticism of this provision is that such accident or mistake is usually not discovered until it is necessary to bring a suit, and then the attorney who is investigating his evidence finds it out, so that the paragraph will be practically a dead letter except in those rare cases where the publisher discovers his own mistake, and I know that to be rare from personal experience. The English provision, as you are aware, allows registration at any time, but prohibits any suit to enforce the copyright until such a registration is made.

As I have said above, the first proviso in Sec. 15 seems to apply to this one year period because it uses the words "in such case."

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Sec. 15. Geo. W. Ogilvie—Continued.

of an owner of a copyright to, at his option, permit the infringement to continue or prevent further infringement by refunding to the infringer all of the cost and expense to which he has gone in connection with the production of the infringing work—in which event the infringer shall deliver up to the copyright owner all plates, sheets and books that infringe, and may be enjoined from further infringement."

Sec. 16. Geo. W. Ogilvie,—Change to read:

"SEC. 16. That in the case of a book published in a foreign country before publication in this country the deposit in the Copyright Office not later than thirty days after its publication abroad of one complete copy of the foreign edition with a request for the reservation of the copyright, and a statement of the name and nationality of the author and of the copyright proprietor, and of the date of publication of the said book shall secure to the author or proprietor an ad interim copyright." [Omit all of section 16 beyond this point.]

Sec. 17. International Typographical Union, International Brotherhood of Bookbinders, and International Printing Pressmen and Assistants' Union of North America,—Amend by striking out after the word "published," the words to and including "therefrom," and inserting the words "in accordance with the manufacturing provisions specified in section thirteen of this Act," to read:

"SEC. 17. That whenever within the period of such ad interim protection an authorized edition shall be produced and published *in accordance with the manufacturing provisions specified in section thirteen of this Act*, (a) of a book in the English language or (b) of a book in a foreign language, either in the original language or in an English translation thereof, and whenever the requirements prescribed by this Act as to deposit of copies, registration, filing of affidavit, and the printing of the copyright notice shall have been duly complied with, the copyright shall be extended to endure in such original book for the full terms elsewhere provided in this Act." (Copyright Hearings, December, 1906, p. 188.)

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Sec. 15,

Sec. 16. Henry Carey Baird.

With all the energy and force which I possess I emphatically protest against the enactment of the Copyright bill. Not only is it unjust to the American people, but it is complicated, harassing, and annoying in the extreme. Especially do I protest against the undue advantages granted to the authors and publishers of foreign books in foreign languages—privileges granted to them which are denied to American citizens.

Sec. 17.

DEFINITE AMENDMENTS PROPOSED.

Sec. 18.

SUGGESTIONS AND CRITICISMS NOT ACCOMPANIED BY DEFINITE
PROPOSALS FOR PHRASEOLOGY.

Sec. 18. Advertising Clubs of America (Hugh K. Wagner).

The present law provides for a long, but absolutely determined, period of copyright protection, twenty-eight years with privilege of renewal for fourteen more, upon compliance with certain prerequisites. One of the most objectionable features of the proposed law is that it does away with this fixed and determinate term of twenty-eight or forty-two years, and provides that the term of copyright shall end fifty years after the death of the author. They say that this is in order that the widow and children of the author may derive revenue from his productions after his death, but it would seem like his children ought to be nearly self-supporting fifty years after his death, and it may be thought that in few cases would the widow still be living. No national bureau of death records is provided by the bill, so that it would be impossible for anyone to find out whether the author were still living, or the date of his death, and it would be, under this provision of the new law, a most intolerable nuisance for any one to undertake to determine whether or not the "limited time" prescribed by the Constitution of the United States for the existence of copyright protection had expired and the matter had become public property. This provision peculiarly affects advertising men, I believe, because some of their productions are ephemeral and embody subject-matter borrowed from wherever it can be found. If the copyright on it has expired, they are entitled to know that fact and to use the material. Under the proposed new law it will be easier to produce a work of genius than to find out whether or not the copyright has expired.

Sec. 18. Robt. H. Parkinson.

Protection for fifty years in the actual works of the author would, in my opinion, be quite as effective in stimulating authorship, and far more effective in advancing science and arts and bringing into possession of the public, without needless restriction in the interest of middlemen, the beneficial results of authorship. I would earnestly recommend a reduction in the term and modification of the provisions to which I have referred.

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Sec. 18.**Sec. 18 (b).** American (Authors') Copyright League,—

Add "otherwise than as assignee of the individual author or authors," to read:

"(b) For fifty years after the date of first publication in the case of any composite or collective work; any work copyrighted by a corporate body *otherwise than as assignee of the individual author or authors* or by the employer of the author or authors; any abridgment, compilation, dramatization, or translation; any posthumous work; any arrangement or reproduction in some new form of a musical composition; any photograph; any reproduction of a work of art; any print or pictorial illustration; the copyrightable contents of any newspaper or other periodical; and the additions or annotations to works previously published." (Copyright Hearings, December, 1906, p. 402.)

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Sec. 18. Frank P. Prichard.

As to the question of duration:

There is much to be said in favor of increasing the term of copyright, and I believe that public opinion is in favor of such extension. It is true also that the general rule in foreign countries seems to be to give the right for a term dependent upon the life of the author. I think, however, that the system we have heretofore had, by which copyright is given for a definite term from a definite date, is a better one, and that the term can be lengthened so as to give the author and his family adequate protection, without taking away the safeguard to the public of a definite term easily calculated by reference to the copyright notice. I believe also that, other things being equal, it is better to have one term applicable to all owners and not to vary the term, as between corporations and individuals, or as between different classes of books. Every such complication increases litigation. For example, questions would inevitably arise under the present bill as to what were "composite" or "collective" works, and whether a work copyrighted by an individual and assigned to a corporation is entitled to the fifty years or the life and fifty years term.

Sec. 18 (b). American (Authors') Copyright League
(R. U. Johnson, secretary).

Argument for amendment of this section, see opposite.

Nearly every magazine is owned by a corporation, which should not be deprived of the full term of copyright provided in clause (c). Take McClure's magazine: Should that periodical be given blanket copyright of only 50 years for its materials, all of which are copyright for the longer term of *life and fifty years*, each article would have to be separately copyrighted and a separate notice printed—which would be a colossal inconvenience and a substantial conflict of equities. There would, moreover, be nothing left to copyright by a general notice.

DEFINITE AMENDMENTS PROPOSED.

Sec. 18. Edward S. Rogers.

Section eighteen, change "balance" to "residue" in the next to the last line in subdivision (a) to read:

"(a) For twenty-eight years after the date of first publication in the case of any print or label relating to articles of manufacture: *Provided*, That the copyright which at the time of the passing of this Act may be subsisting in any article named in this section shall endure for the *residue* of the term of copyright fixed by the laws then in force."

Sec. 18 (c). American (Authors') Copyright League,—
Change to read:

"(c) For the lifetime of the author and for fifty years after his death, in the case of his original book, lecture, dramatic or musical composition, map, work of art, drawing or plastic work of a scientific or technical character, or other original work, but not including any work specified in subsections (a) or (b) hereof, *except that the copyright as a whole of a composite work or periodical shall not preclude the right of an individual author of any separable copyrightable component part thereof to obtain separate copyright for his individual work for the term of life and fifty years*; and in the case of joint authors, during their joint lives and for fifty years after the death of the last survivor of them." (Copyright Hearings, December, 1906, p. 402.)

Sec. 18, last paragraph. American (Authors') Copyright League,—Change to read:

"The copyright in a work published anonymously or under an assumed name shall subsist for the same period as if the work had been produced bearing the author's true name: *Provided*, That within fifty years from the date of publication and before the death of the author his true name shall be registered in the Copyright Office." (Copyright Hearings, December, 1906, p. 402.)

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Sec. 18. Edmund Wetmore.

I think the term of the copyright under the new bill is
too long.

Sec. 18 (c).

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Sec. 19. American (Authors') Copyright League,—
Change the second proviso to read:

“And provided further, That if such subsisting copyright shall have been assigned or a license granted therein for publication, and if such assignment or license shall contain provision for payment of royalty, and if the renewed copyright for the extended term provided in this Act shall not be assigned nor license therein granted to such original assignee or licensee or his successor, said original assignee or licensee or his successor shall nevertheless be entitled to continue to publish the work on payment of the royalty stipulated in the original agreement; but if such original assignment or license contain no provision for the payment of royalty, the copyright shall be renewed and extended only in case the original assignee or licensee or his successor shall join in the application for such renewal and extension.” (Copyright Hearings, December, 1906, p. 402.)

Sec. 19. Geo. W. Ogilvie,—Change to read:

“Sec. 19. That the copyright subsisting in any work at the time when this Act goes into effect may, at the expiration of the renewal term provided for under existing law, be further renewed and extended by the author, if he be still living, or if he be dead, leaving a widow, by his widow, or in her default or if no widow survive him, by his children, if any survive him, for a further period such that the entire term shall be equal to that secured by this Act: Provided, That application for such renewal and extension shall be made to the Copyright Office and duly registered therein within one year prior to the expiration of the existing term.” [Omit all of section nineteen beyond this point.]

Sec. 20. Albert H. Walker,—Change to read:

“Sec. 20. That the author's exclusive right to dramatize or translate any one of his works in which copyright is subsisting shall, after the expiration of ten years from the day on which the work was registered in the Copyright Office, continue effective only in case a dramatiza-

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Sec. 19. Robt. H. Parkinson.

The provision of section 19, which leaves the author at the mercy of his assignee when applying for extension, seems to proceed upon the theory that the law is made for the benefit of publishers rather than for the benefit of authors or of the public. The old law providing for extension of patents was carefully guarded to give the inventor, rather than the assignee, the benefit. If such an extension is to be given for the benefit of the author, or for the purpose of encouraging authors, this restriction is out of place.

Sec. 19. Edmund A. Whitman.

Section 19 provides for a renewal of existing copyrights, but what is the reason for changing the phraseology of the present statute? Under the Act as it stands the renewal inures directly to the benefit of the widow and children. As it is phrased in the new Act, the renewal is to be made by those persons but inures to the benefit of the heirs at law of the author if he be dead, so that the widow, not being an heir, doesn't get any share of it. I have never been able to understand why the present act excludes the husband, and I see the new Act contains that exclusion.

In the second proviso of Sec. 19 it is provided that a licensee shall join in any application. The language seems to be broad enough to include a licensee for a limited term, and I assume what was intended was to have inserted in the third line from the bottom after the words "payment of royalty," the words "during the term of copyright."

Sec. 20. American (Authors') Copyright League,—
Omit altogether, so as to make rights of translation and dramatization coterminous with copyright; or at least omit the words *dramatize or* and *dramatization or* and *in the case of translation*, so as to secure coterminous rights of dramatization. (Copyright Hearings, December, 1906, p. 402.)

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Sec. 20. Albert H. Walker—Continued.

tion or translation thereof has been produced within that period by his consent or that of his assigns or *legal representatives*, and in the case of translations shall be confined to the language of any translation so produced." (Copyright Hearings, December, 1906, p. 140.)

Sec. 21. Edward S. Rogers.

Omit the word "copyrightable" following the word "unpublished," to read:

"SEC. 21. That every person who, without the consent of the author or proprietor first obtained, shall publish or reproduce in any manner whatsoever any unpublished work shall be liable to the author or proprietor for all damages occasioned by such injury, and to an injunction restraining such unauthorized publication, as hereinafter provided."

Sec. 21. Print Publishers' Association of America (Wm. A. Livingstone, president).

Secs. 21 and 22. In the first line of each section, before the word "consent," insert the word "written," and in the second line of each section cut out the words "author or," to read:

"SEC. 21. That every person who, without the *written* consent of the proprietor first obtained, shall publish or reproduce in any manner whatsoever any unpublished copyrightable work shall be liable to the author or proprietor for all damages occasioned by such injury, and to an injunction restraining such unauthorized publication, as hereinafter provided."

"SEC. 22. That any reproduction, without the *written* consent of the copyright proprietor, of any work or any material part of any work in which copyright is subsisting shall be illegal and is hereby prohibited. The provisions of section thirty-eight hundred and ninety-three of the Revised Statutes prohibiting the use of the mails in certain cases, and also the provision of section thirty-eight hundred and ninety-five of the Revised Statutes shall apply, and the importation into the United States of any such fraudulent copies or reproductions is hereby prohibited." (Copyright Hearings, December, 1906, p. 110.)

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Sec. 20. American (Authors') Copyright League (Robert Underwood Johnson, secretary).

One other matter, and that is the proposed omission from section 20 of everything relating to dramatization. This section provides for the limitation of the right of dramatization and translation to ten years. We respectfully submit that that section should be eliminated. (Copyright Hearings, December, 1906, p. 95.)

Sec. 21. Edward S. Rogers.

Section 21, omit the word "copyrightable," line 4. The appearance of that word in this section would, I think, give rise to debate, and it seems to me that it would tend to simplify matters to leave it out. Under the common law the unauthorized publication of matter, whether copyrightable or not, may be enjoined at the suit of the owner of the work. If the statute contained the word "copyrightable" in this connection, it would at least be debatable whether it deprived the proprietor of unpublished uncopyrightable matter of the right he now has to restrain unauthorized publication of it.

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Sec. 22. Geo. W. Ogilvie,—Change to read:

“SEC. 22. That any reproduction, without the consent of the author or copyright proprietor, of any work or any material part of any work in which copyright is subsisting shall be illegal and is hereby prohibited, *except as provided for in section fifteen*. The provisions of section thirty-eight hundred and ninety-three of the Revised Statutes prohibiting the use of the mails in certain cases, and also the provision of section thirty-eight hundred and ninety-five of the Revised Statutes shall apply, and the importation into the United States of any such fraudulent copies or reproductions is hereby prohibited.”

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Sec. 22. C. P. Montgomery of the Treasury Department.

With regard to section 22, permit me to suggest that the provisions therein applying sections 3893 and 3895 of the Revised Statutes appear to be vague and indefinite, and I can not perceive their proper application in this connection. Moreover, section 3893 was amended July 12, 1876, and September 26, 1888. If it was intended by the insertion of these two statutes to prohibit the use of the domestic mails for the transmission of fraudulent copyright reproductions, then it seems to me that it would be proper to place in the bill a separate section embodying that idea. If this were done, section 22 would read: "That any reproduction, without the consent of the author or copyright proprietor, of any work or any material part of any work in which copyright is subsisting shall be illegal and is hereby prohibited; and the importation into the United States of any such fraudulent copies or reproductions is hereby prohibited." The language of the section would then be clear. (Copyright Hearings, December, 1906, p. 392.)

Sec. 22. Edmund A. Whitman.

In Sec. 22 you allow a reproduction with the consent of the author or proprietor, but in Sec. 23, in the fourth line, you give that consent to the proprietor alone. As you first put it, the author may give the consent although the proprietor is unwilling.

The provisions of Sec. 22 seem to be extraordinary. On the mere complaint of infringement, without any proof in court, you give the postal authorities the right to exclude the alleged infringing publication from the mails, and give the same authority to the customs officers. I agree that after the fact of infringement has been judicially determined this provision will be wise, but it is going pretty far to allow the postal authorities to exclude a periodical from the mails because somebody turns up and claims that some article in it is an infringement of his rights.

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Sec. 23 (b). Ansley Wilcox.

Sec. 23 (b), line 12 and following:

Change as follows: "Or, in lieu of such damages and profits, the plaintiff may elect to claim and thereupon may recover as liquidated damages, and not as a penalty, an amount to be assessed as hereinafter stated, but such damages shall not in any case be less than \$250 nor more than \$5,000, except that where a wilful or intentional infringement is found the court may, in its discretion, double or treble the liquidated damages, even though this may raise the amount above \$5,000."

And after that make the amounts fixed and strike out the words "not less than." (Copyright Hearings, December, 1906, p. 144.)

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Sec. 23. Frink of Boston.

I do not think it is the intention of any of those most interested in a good copyright law to work injustice against a person who infringes without intending to do so and who is willing to make right for it as far as possible, and that section, it seems to me, should be given careful study.

Sec. 23. D. C. Harrington, for The International Text-book Company.

The limiting of the damages to \$5,000 may be entirely inadequate ... I would suggest, therefore, that the maximum amount of damages be stricken out of the Act and that the publishing party be permitted to recover the actual damages which he can prove he has sustained upon the trial of any particular case. (Copyright Hearings, December, 1906, p. 153.)

Sec. 23. Cyrus Kehr.

Sec. 23. I take leave to suggest the addition to section 23—perhaps to follow paragraph (d)—of a provision providing that it shall be a misdemeanor punishable by fine or imprisonment, or both, for an infringer or his agents or employees to destroy, secrete, or remove infringing copies after the marshal enters upon the premises with a writ of seizure or other writ for the seizing or taking of such copies.

I make this suggestion because of actual cases of such removal or secretion. Recently there was a case in which about 5,000 infringing copies were thrown down the back stairway after the marshal had entered the premises. (Copyright Hearings, December, 1906, p. 390.)

Sec. 23. Benno Loewy.

I have read the proposed bill (Senate 6330) and find difficulties in the way of an effective remedy in Sec. 23. It is altogether too cumbersome and involved. In most cases it would be absolutely impossible to make proof of actual damage, and the Act is silent as to the contingencies upon which "in lieu of actual damage and profits" (p. 17, line 12) the court shall assess damages as provided in lines 18 to 24 on page 17 and lines 1-14 on page 18 of the bill. While the new provisions undoubtedly contain elements of merit, they appear to me in their present form to be an undigested mess which are bound to lead to endless litigation with extremely unsatisfactory results.

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Sec. 23 (b). First. Nathan Burkan.

The word "ten" should be stricken out and "one" inserted in place thereof. We consider that ten dollars is too harsh a penalty; that one dollar would be more appropriate.

The section to read:

"First. In the case of a painting, statue, or sculpture, or any device, contrivance, or appliance mentioned in Sec. 1, subdivision (g), of this Act, not less than one dollar for every infringing copy made or sold by or found in the possession of the infringer or his agents or employees."

Sec. 23 (b) Third. Geo. W. Pound.

Change page 18, line 3, to read "public performance for profit," so that par. (b) third will read:

"Third. In the case of a dramatic or musical composition, not less than one hundred dollars for the first and not less than fifty dollars for every subsequent infringing public performance for profit." (Copyright Hearings, December, 1906, p. 316.)

Sec. 23 (b). Fourth. American Newspaper Publishers' Association,—Insert at end of section 23 (b) fourth, or other appropriate place:

"Provided, however, That the reproduction of a photograph in any newspaper by the process known as stereotyping shall not be construed as an infringement of the copyright of such photograph." (Copyright Hearings, December, 1906, p. 169.)

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Sec. 23. Geo. W. Ogilvie.

There is no provision here whereby a man who has a perfect right to publish a foreign book can get one penny of damages from a man who deliberately holds him up without any just cause for it. That that is sometimes done under the present law is evidenced by the fact that the publishers of "The Simple Life," in New York, got after a publisher who translated a French edition of it and held him up until they could get their edition on the market. He had absolutely no recourse, and yet his business was injured.

There is no provision here to take care of any man except the man who starts a suit. (Copyright Hearings, December, 1906, p. 49.)

Sec. 23 (b). Publishers' Association of New York City.

The Publishers' Association of New York City respectfully protests against any changes being made in the copyright law as it stands at present in so far as such proposed changes relate to increased penalties for infringement of photographs, and respectfully requests that the copyright laws relating to photographs and their infringement, as well as penalties, remain unchanged. (Copyright Hearings, December, 1906, p. 170.)

Sec. 23 (b). Edmund A. Whitman.

In Sec. 23, in the sub-paragraphs marked first and fourth, the Act uses the words "found in the possession." I would suggest omitting the word "found" because that has been judicially determined to mean a seizure by the U. S. marshal acting under proper legal authority, and no two courts in the United States have yet agreed on what the legal authority was, and most of them said that there was no such authority known to the law. If the Act means that no damages can be imposed unless a marshal with a writ of replevin or some other legal process actually seizes infringing copies in the hands of the defendant and not of his agents, then the words might stand as they are, but if you mean to have the words taken in their natural sense, simply having evidence given that the defendant has such copies, there is a long line of decisions preventing any such interpretation.

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Sec. 23 (c). Geo. W. Ogilvie,—Add this paragraph:

“(c) When suits for infringement of copyright are started and an injunction obtained, the complainant, should he not prove his claim, shall pay to the person enjoined all of the profits he may have made on the publication in controversy during the time the injunction was in force and such costs and damages as shall seem proper to the court—but in no case less than the sum of five hundred dollars, and such sum shall not be regarded as a penalty.”

Sec. 23 (c). Geo. W. Pound.

On page 18, line 9, insert after the word “conditions” the words “and sufficient authority,” and after the word “right,” line 11, insert “upon notice and upon such terms, conditions and security as the court may prescribe,” to read:

“(c). To deliver up on oath to be impounded during the pendency of the action, upon such terms and conditions and sufficient security as the court may prescribe, all goods alleged to infringe a copyright upon notice and upon such terms, conditions and security as the court may prescribe.” (Copyright Hearings, December, 1906, p. 316.)

Sec. 23, last paragraph. Edmund A. Whitman.

In the last line of Sec. 23 I would suggest striking out the words “any of” before the words “the remedies,” to read:

“Any court given jurisdiction under section thirty-two of this Act may proceed in any action instituted for violation of any provision hereof to enter a judgment or decree enforcing the remedies herein provided.”

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Sec. 23 (c) and (d). Chas. P. Montgomery of the Treasury Department.

Sec. 23, subsections c and d. The words "infringe" and "infringing" are used. Are these words intended to include fraudulent importations, *i. e.* are articles reproduced abroad *fraudulently* and imported in violation of the rights of the copyright proprietor *infringing articles* within the meaning of subsections c and d? If so, there seems to be a conflict between these subsections and sections 26 to 29, because subsections c and d provide that the infringing copies be impounded on order of the court, and their destruction (by whom?) etc.; while sections 26 to 29 direct seizure, forfeiture and destruction by the Treasury Department of "any and all such fraudulent copies prohibited importation," etc. If it is intended that the provision in section 26—"Any and all such fraudulent copies," etc.—shall not apply to subsections c and d, the bill should plainly so provide. The Treasury Department, of course, does not desire to have anything to do with the enforcement of the provisions of subsections c and d.

Sec. 23 (d) Advertising Clubs of America (Hugh K. Wagner).

Another extraordinary provision of the proposed law is that an alleged infringer can be required instantly, upon the filing of a suit, "to deliver up on oath to be impounded during the pendency of the case, upon such terms and conditions as the court may prescribe, all goods alleged to infringe a copyright." Under this provision, if an advertiser had, at large expense, prepared a quantity of advertising matter which he was about to distribute at the right season of the year, he would be obliged to deliver it up into court upon the mere filing against him of the most unfounded kind of a suit, and this notwithstanding the fact that the advertising matter in question would be of absolutely no value to the advertiser when finally released from the custody of the court.

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Secs. 23-24. Ansley Wilcox.

This is an amendment to sections 23 and 24, relating to remedies and especially damages, and to sections 32 to 36, inclusive, relating to remedies and procedure. I think these sections should be brought together in the bill by moving sections 25 to 31 to another place, and I think also that there should be added a new section or some such provision as follows, which I have copied from the bankruptcy act, section 30:

"All necessary rules, forms, and orders as to procedure and for carrying this Act into force and effect shall be prescribed, and may be amended from time to time by the Supreme Court of the United States." (Copyright Hearings, December, 1906, pp. 196-197.)

Sec. 24. Edward S. Rogers.

I would suggest that section 24 be changed to read as follows:

"That proceedings for injunction, damages and profits and those for seizure of infringing copies, plates, molds, matrices, etc., as aforementioned, may be united in a single action, suit or proceeding. The seizures herein provided for may be enforced as follows: 'Upon the institution of any action, suit, or proceeding under this Act, the plaintiff may file with the clerk of the courts, which are given jurisdiction under section thirty-six of this Act, an affidavit stating upon the best of his information, knowledge, and belief, the number and location of the infringing copies, plates, molds, matrices, or other means of making such infringing copies, and shall file with such clerk a bond in an amount double the market value of such infringing copies, plates, molds, matrices or other means of making such infringing copies, with good and sufficient surety, to be approved by said clerk and conditioned to pay all damages sustained by reason of any unlawful seizure; and upon the filing of said affidavit and bond and the approval of said bond, the clerk shall thereupon issue as of course a writ directed to the marshal of the district where the said infringing copies, plates, molds, matrices, or other means of making such infringing copies, shall be

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Sec. 24. Benno Loewy.

Section 24 provides "that the proceedings for an injunction, damages and profits, and those for a seizure of infringing copies, plates, molds, matrices, etc., aforementioned, may be united in one action." This reads very well. The difficulty, however, is in determining what sort of an action can be brought in which all these classes of remedies may be united. It has been repeatedly held by the federal courts that penalties cannot be enforced by actions in equity. The procedure in equity, except in so far as governed by the equity rules of the Supreme Court, is still governed by the old chancery practice of England and is supposed to be uniform throughout the United States. The procedure in actions of law, however, is regulated "as near as may be" by the procedure in the several states in which the federal court happens to be sitting, as provided by section 914 of the Revised Statutes. There is, therefore, no uniformity whatever in the practice in actions of law, and one of the first essentials of a general statute, such as a copyright law, should be its uniform enforcement throughout the United States. ... The difficulty existing under the present law in enforcing a seizure of infringing copies is not met by the new law. No process is pointed out by which the infringing copies may be seized.

Sec. 24. Edward S. Rogers.

One of the principal criticisms, it seems to me, to which the bill could be subjected, is, that while it provides in broad terms for certain remedies it does not provide any method of enforcing them. That is the great objection to the statutes now in force; the result has been that under the present law, counsel have been forced to rely on their ingenuity to devise methods of procedure, the result of which has always been unsatisfactory and frequently disastrous. There should, I think, be provided a simple machinery for enforcing the seizure ...

The words "action, suit, or proceeding," seem to me preferable to "action," which, strictly speaking, applies

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Sec. 24. Edward S. Rogers—Continued.

stated in said affidavit to be located, directing the said marshal forthwith to seize and hold the same subject to the order of the court. In the event that the marshal is unable to execute such writ, the court may, on motion of the plaintiff, cause the defendant to appear forthwith, and upon oath and upon such terms and conditions as the court may prescribe, deliver up to be impounded such infringing copies, plates, molds, matrices, or other means of making such infringing copies.' "

Sec. 25. Cyrus Kehr.

Sec. 25. I take leave to suggest the insertion of the following paragraph immediately after the first paragraph of section 25:

"Any person who, with fraudulent intent, shall insert or impress or apply into, to, or upon any article which is an infringement of any copyright secured by this or any other Act of Congress the notice of copyright inserted or impressed or applied into, to, or upon an article published or made by a lawful publisher or maker under said copyright, or who shall wilfully or knowingly aid or abet in so inserting or impressing or applying such notice to such infringing article, or who shall wilfully or knowingly im-

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Sec. 24. Edward S. Rogers—Continued.

only to actions in their form legal. "Suit," strictly speaking, includes proceedings in equity, and "proceeding" is a general term applied to either. The section as it is drafted might perhaps be construed to mean only that these various proceedings could be united only in an action at law.

Sec. 25, par. 1. G. H. Davis.

There is a paragraph farther over, section 25 (par. 1), page 18, which provides that anyone who shall knowingly and wilfully infringe the proposed copyright "shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment for not exceeding one year." Now, if I proceed "wilfully" to exercise my full rights vested in me by my existing patents in defiance of the conflicting and unconstitutional copyright grant proposed, then the copyrighter can put me in jail for a year and during my incarceration and during the entire life of my patents make, use, and sell my machines under the provisions of subsection (g). It is no misdemeanor for one inventor to infringe the patents of another inventor, no matter how frequent and wilful such infringements may be; then why imprison an inventor for infringing a usurping copyrighter? (*See "Arguments," Copyright Hearings, June, 1906, p. 100.*)

Sec. 25. Cyrus Kehr.

In Sec. 25, par. 1, line 2, are the words "any copyright secured by this Act." Why limit to this act? This remedy should apply to acts now in force. Why not use "any copyright secured by this or any other act of Congress"?

The same applies to line 2 of the second paragraph of section 25.

In Sec. 25, par. 2, line 3, are the words "upon any article." Is this paragraph intended to apply this penalty for every *article* or collectively to a group or *lot of articles made at one time*? (*Copyright Hearings, December, 1906, p. 390.*)

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Sec. 25. Cyrus Kehr—Continued.

port such an infringing article bearing such copyright notice, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment for not exceeding one year or by fine of not less than two hundred dollars (\$200.00) nor more than one thousand dollars (\$1,000.00), or both, in the discretion of the court, such punishment being independent of the punishment provided by the last preceding paragraph of this section.” (Copyright Hearings, December, 1906, p. 390.)

Sec. 25, par. 2. Geo. W. Ogilvie,—Change to read:

“Any person who, with fraudulent intent, shall insert or impress any notice of copyright required by this Act, or words of the same purport, in or upon any article for which he has not obtained copyright, or with fraudulent intent shall remove or alter the copyright notice upon an article duly copyrighted, shall be guilty of a misdemeanor, punishable by a fine of not less than one hundred dollars and not more than one thousand dollars. Any person who shall knowingly issue or sell any article bearing a notice of United States copyright which has not been copyrighted in this country, *during the year with which such notice is dated and by the person whose name is given as the person who took out the copyright* or who shall knowingly import any article bearing such notice, or words of the same purport, which has not been copyrighted in this country, shall be liable to a fine of one hundred dollars *for each offense, and an offense shall be construed as meaning each and every edition containing a false notice.*”

Sec. 25, par. 2. Edward S. Rogers, Chicago, Ill.

The second paragraph of section twenty-five, on page twelve, should, I think, be changed to read as follows:

“Any person who with fraudulent intent shall insert or impress any notice of copyright required by this Act or words of the same purport in or upon any uncopyrighted article, or with fraudulent intent shall remove or alter the copyright notice upon a copyright article,” etc.

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Sec. 25. Henry Carey Baird.

It is respectfully submitted that the pains and penalties provided for in the bill under discussion are absolutely unjust and iniquitous when it is considered in what manner these copyrights are granted by the United States Government; and the very idea of imprisonment for the violation of a title so easily obtained without proof is repugnant to every feeling of humanity. Such punishment is only worthy of an absolute government, but is quite unworthy of a free government like ours.

Sec. 25. Robt. H. Parkinson.

The penal provisions of this bill I think unreasonably severe. They are out of all proportion to the penalty inflicted upon the person who obtains copyright by perjury. It is to be remembered that the question of infringement is often one on which judges differ, and may be determined by a bare majority of the court. The provisions for seizure are also too loose and comprehensive. If the intent of section 23 is to give courts of equity jurisdiction to award penalties, I question both the propriety and constitutionality of such a provision.

Sec. 25. Henry E. Randall, St. Paul, Minn.

Sec. 25. This provides that the infringement of a copyright shall be punished as a misdemeanor, and imposes, it seems to me, an extreme punishment for the infringement of books and the like.

DEFINITE AMENDMENTS PROPOSED.

Sec. 26. Edward S. Rogers,—Change to read:

“That any and all *articles* prohibited importation by this Act which are brought into the United States from any foreign country shall be seized by the collector, surveyor, or other officer of the customs, or any person authorized in writing to make seizures under the customs revenue laws, in the district in which they are found.”
[etc., without further change].

Sec. 29. C. P. Montgomery of the Treasury Department.

[New paragraph to follow Sec. 29.]

“The Secretary of the Treasury and the Postmaster-General are hereby empowered to make necessary and proper rules and regulations requiring notice to be given to the Treasury Department or Post-Office Department, as the case may be, by copyright proprietors or injured parties of the actual or contemplated importation of articles prohibited importation by this Act, and which infringe the rights of such copyright proprietors or injured parties.” (Copyright Hearings, December, 1906, p. 392.)

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Sec. 26. Edward S. Rogers.

Section 26, in the first line, I think, the words "such fraudulent copies" should be omitted and the word "articles" substituted, so that that line will read: "That any and all articles prohibited importation by this Act." As the section is drafted the words "such fraudulent copies" would be construed, I think, to apply only to the copies bearing a false notice of copyright as provided in the preceding section, and it is my understanding that section 26 is intended to refer to all articles which may be prohibited importation under any of the provisions of the Act.

Sec. 29. Edmund A. Whitman.

Sec. 29 is going to make, it seems to me, a large amount of trouble for innocent people without any corresponding gain. Take a sealed package containing a book, for instance, mailed to you. I am not aware that the words "carefully examined" authorize the postmaster to open the package, and the result is that you are summoned before the customs officer to open the package and show him what it contains. At least that is the present practice with articles supposed to be dutiable. If it is meant that the postmaster should have the authority to open a package and examine it, that power should be specifically given.

Sec. 29. C. P. Montgomery of the Treasury Department.

[New paragraph to follow Sec. 29.]

As stated to the Committee, the necessity exists for this amendment by reason of the fact that customs officers and postmasters are unable to examine the large number of catalogues of title entries to determine whether a given importation is prohibited, without causing delay in the delivery of importations, complaint, and probable injustice.

The clause "or injured parties" is used advisedly, as I understand copyright proprietors not infrequently assign their rights to reproduce by methods other than that used in the production of the copyrighted article, with the understanding that the original copyright notice is to be

DEFINITE AMENDMENTS PROPOSED.

Sec. 29.

Sec. 30, par. 1. International Typographical Union, International Brotherhood of Bookbinders, and International Printing Pressmen and Assistants' Union of North America,—Change to read:

“SEC. 30. That during the existence of the American copyright in any book the importation into the United States of any foreign edition or editions thereof (although authorized by the author or proprietor) *which have not been produced in accordance with the manufacturing provisions specified in section thirteen of this Act*, or any editions thereof produced by lithographic process not performed within the limits of the United States, in accordance with the requirements of section thirteen of this Act, shall be, and is hereby, prohibited: *Provided, however, That such prohibition shall not apply—*” [Remainder of paragraph unchanged.] (Copyright Hearings, December, 1906, p. 188.)

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Sec. 29. C. P. Montgomery—Continued.

placed upon all such reproductions. The injured party in such a case would not be the copyright proprietor but his assignee.

It is believed that if this proposed amendment is adopted it will enable the Treasury and Post-Office Departments to make such regulations as will be decidedly beneficial to copyright proprietors. (Copyright Hearings, December, 1906, p. 391.)

Sec. 30. Robt. H. Parkinson.

I think the provisions about importing foreign publications are too severe; that there should be some qualification in case the domestic publication is out of print or not supplied in reasonable quantities, and that the restrictions upon bringing in a single copy of a foreign publication are too exacting.

DEFINITE AMENDMENTS PROPOSED.

Sec. 30 (d). International Typographical Union, International Brotherhood of Bookbinders, and International Printing Pressmen and Assistants' Union of North America,—Change to read:

“(d) To books in a foreign language or languages, published without the limits of the United States, but deposited and registered for an ad interim copyright under the provisions of this Act; in which case the importation of copies of an authorized foreign edition shall be permitted during the ad interim term of two years, or until such time within this period as an edition shall have been produced *in accordance with the manufacturing provisions specified in section thirteen of this Act*, or by a lithographic process performed therein as above provided;” (Copyright Hearings, December, 1906, p. 188.)

Sec. 30 (e). Third. Library Copyright League (B. C. Steiner, president.)

The Library Copyright League asks that there be omitted from the bill in the report of the committees the words after the words “United States,” in line 25, page 24, of the Senate print of the bill No. 6330, through and including the word “proprietor,” in line 5, page 25, and that on line 19 of page 24 the word “one” be stricken out and the word “two” be inserted in lieu thereof.

Paragraph to read:

“Third. When specially imported, for use and not for sale, not more than *two copies* of any such book in any one invoice, in good faith, by or for any society or institution incorporated for educational, literary, philosophical, scientific, or religious purposes, or for the encouragement of the fine arts, or for any college, academy, school, or seminary of learning, or for any State school, college, university, or free public library in the United States.” (Copyright Hearings, December, 1906, pp. 67–68.)

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Sec. 30 (d).

Sec. 30 (e).

DEFINITE AMENDMENTS PROPOSED.

Sec. 30 (e). Fourth. Geo. W. Ogilvie,—Add at end of proviso:

“except as provided for in section fifteen,” to read:

“*Provided*, That copies imported as above may not lawfully be used in any way to violate the rights of the American copyright proprietor or annul or limit the copyright protection secured by this Act, and such unlawful use shall be deemed an infringement of copyright, *except as provided for in section fifteen.*”

Sec. 31. Edward S. Rogers,—Change to read, omitting the words “as in the case of fraudulent copies”:

“**Sec. 31.** That all copies of authorized editions of copyright books imported in violation of the above provisions of this Act may be exported and returned to the country of export, provided it be shown to the satisfaction of the Secretary of the Treasury upon written application that such importation does not involve wilful negligence or fraud. If absence of wilful negligence or fraud be not established to the satisfaction of the Secretary of the Treasury, the importation shall be proceeded against in the manner prescribed by sections twenty-six to twenty-nine, inclusive, of this Act.”

Sec. 32.

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Sec. 30 (e).

Sec. 32. D. C. Harrington, for The International Text-book Company.

As to the jurisdiction of the courts and the form of action to obtain possession of copies of copyrighted books which a defendant is wrongfully reproducing and selling. In equity all the remedies to which he may be entitled under the act should be obtained in one action in equity. Courts of equity have jurisdiction for the purpose of preventing a multiplicity of actions and giving such relief in every case as may do justice ... It may be a saving of litigation if this jurisdiction is given the court and to have it specifically stated in the bill. (Copyright Hearings, December, 1906, p. 153.)

Sec. 32. Henry E. Randall.

This section, providing that actions may be brought wherever a copy of an alleged infringing work might be sold in any one of the United States, its territories, or possessions, would subject a defendant to a most heavy burden in defending suits of this nature. To have to respond to suits in districts and territories not the residence of defendant is contrary to the general principles in regard to the jurisdiction of courts, and would operate as a practical denial of justice in many cases, because defendant would often find it impossible or impracticable to defend, no matter how just his defense might be.

DEFINITE AMENDMENTS PROPOSED.

Sec. 32, par. 2. Geo. W. Pound,—Change “may” to “shall” and omit all of that paragraph after the word “inhabitant,” to read:

“Actions arising under this Act *shall* be instituted in the district of which the defendant is an inhabitant.”
(Copyright Hearings, December, 1906, p. 317.)

SUGGESTIONS AND CRITICISMS NOT ACCOMPANIED BY DEFINITE
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Sec. 32, par. 2. Advertising Clubs of America (Hugh K. Wagner).

One of the most objectionable provisions of the proposed law is the change that it makes in regard to the jurisdiction of the courts. The bill says: "Actions arising under this Act may be instituted in the District of which the defendant is an inhabitant, or in the District where the violation of any provision of this Act has occurred." Under the existing law, the owner of a copyright can sue a defendant only in the district where the defendant resides, but under the proposed change which I have quoted, an advertising agency, making wide distribution of advertising matter, might find itself sued simultaneously in San Francisco, New Orleans, Boston, and Chicago, notwithstanding the fact that its place of residence was Cincinnati. Obviously this would be a great hardship and an unreasonable burden.

DEFINITE AMENDMENTS PROPOSED.

Sec. 32, par. 2.

SUGGESTIONS AND CRITICISMS NOT ACCOMPANIED BY DEFINITE
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Sec. 32, par. 2. Alfred Lucking.

My clients indorse the principles of section 32, paragraph 2; that is, that the defendant should be suable where he issues an edition of a directory. He may do a considerable business in a city and never be there personally. He should be reachable there for all consequences of that business. The suit should not be limited to the place where he lives or may be found. But on the other hand, to drag a defendant thousands of miles to defend a suit simply because a single copy of the book is sold there would be a gross abuse of power. We agree to that. We in a measure indorse the suggestion of Judge Walker as a compromise, which is contained on page 114 of the circular or book put out by the Library, entitled "Amendments proposed to the copyright bill." He says or suggests:

"Actions arising under this Act may be instituted in the district of which the defendant is an inhabitant, or in the district where his violation of any provision of this Act has occurred, and wherein the defendant has a regular and established place of business."

The words I would criticise there are the adjectives "regular" and "established." If he has an agent there, it should be somewhat broader. (Copyright Hearings, December, 1906, pp. 149-150.)

Sec. 32, par. 2. Robt. H. Parkinson.

The provision by which suit can be brought in any district where an infringement may be committed is in striking contrast to the general provisions of our federal statutes requiring suit to be brought in the district where the defendant resides or where he has a regularly established place of business in which he is carrying on the acts complained of.

DEFINITE AMENDMENTS PROPOSED.

Sec. 32, par. 2. Edward S. Rogers,—Change to read:

“Actions, *suits or proceedings* arising under this Act may be instituted in the district of which the defendant is an inhabitant *or is found*, or in the district where the violation of any provision of this Act has occurred.”

SUGGESTIONS AND CRITICISMS NOT ACCOMPANIED BY DEFINITE
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Sec. 32, par. 2. Edward S. Rogers.

Section 32, the second paragraph in the second line, there should be substituted, I think, the words "or is found" after "inhabitant," and after the word "actions" should be inserted "suits or proceedings," so that the second paragraph of section 32 will read as follows:

"Actions, suits, or proceedings arising under this Act may be instituted in the district of which the defendant is an inhabitant or is found, or in the district where the violation of any provision of this Act has occurred."

The addition of the words "suits or proceedings" after the word "actions" has already been explained. The term "action" technically is limited to actions at law; the phrase "or is found," I think, should be added, because cases may arise where an infringer may be located in a district in which he is neither an inhabitant nor violating the Act. The copyright proprietor should be given the right to sue in any district where service of process on the defendant can be had. Under the law as it at present stands, copyright suits can be maintained in any district where the defendant is found as well as that whereof he is an inhabitant.

Lederer v. Rankin, 90 Fed., 449.

Spears v. Flynn, 102 Fed., 6.

The act of March 3, 1897, has changed the rule in this regard as to patent cases, but copyright cases are not affected, and suit may be brought in any district where the defendant can be found. This rule is as it should be; any other would be a great hardship and might enable infringers to evade the law. It is reasonable, perhaps, that in patent cases suits be required to be brought in the district in which the defendant is an inhabitant or shall have committed acts of infringement and have a regular established place of business. The infringement of a patent is usually a more serious affair than the infringement of a copyright. In patent cases defendants are ordinarily more likely to be responsible and have a permanent abode; the literary pirate, on the other hand, needs only an easy conscience and funds enough to hire the use of a printing press; he is frequently in one place to-day and in

DEFINITE AMENDMENTS PROPOSED.

Sec. 32, par. 2.

Sec. 32, par. 3. Edward S. Rogers.

In the third line of the third paragraph of section 32, the words "an injunction" should, I think, be changed to "injunctions," and after the word "prevent" should be inserted the words "and restrain," to read:

"Any such court, or judge thereof, shall have power, upon bill in equity filed by any party aggrieved, to grant *injunctions* to prevent *and restrain* the violation of any right secured by said laws, according to the course and principles of courts of equity, on such terms as said court or judge may deem reasonable." [Remainder of paragraph unchanged.]

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Sec. 32, par. 2. Edward S. Rogers—Continued.

another to-morrow, and the victim of his piracy should be able to sue him wherever he can lay hands on him and not be required to seek out the district of his residence, for he frequently has none, or go to a district where the infringement may have occurred only to find that when he arrives with his papers the infringer has decamped. A partial remedy for this situation is found in the last paragraph of section 32, which apparently permits, when an action is brought out of the district of which defendant is an inhabitant, process to run out of the district where the suit is brought and be served by the marshal in the district wherever defendant is an inhabitant or where he may be found. It is, of course, within the power of Congress to provide that process of the Federal circuit courts may run outside of the district where said courts are located (*United States v. Union Pacific*, 98 U. S., 569), and the provision to this effect in this Act is an admirable one in that it renders more easy the pursuit of the pirate; but the complainant ought to be permitted, if he elects, not only to sue in the district whereof the defendant is an inhabitant or where he may have infringed, but also in any district where he may be found. This section as at present drafted, omitting a provision that defendant may be sued in the district where he may be found, handicaps the copyright proprietor in vindicating his rights in a manner in which he is not handicapped under the existing law. Its enactment in its present form would, I think, be a retrogression.

Sec. 32, par. 3.

DEFINITE AMENDMENTS PROPOSED.

Sec. 32, par. 5. Edward S. Rogers.

The last paragraph of section 32, on page 18, should be changed to read as follows: "When any action is brought in any *district* whereof the defendant is not an inhabitant or found," etc.

The substitution of the word "district" for "place" seems advisable since the expression "in any district" is the customary one in federal legislation. The words "or found" are added for the reasons above stated.

Sec. 33. Edward S. Rogers.

There should somewhere in the bill, I think, be a provision prescribing the manner of collecting fines imposed. I would suggest a section about as follows:

"The district courts of the United States of the district whereof the defendant is an inhabitant or is found shall have jurisdiction on information of the United States attorney for such district to impose the fines herein provided." This might be very properly inserted after section 33.

Sec. 33. Nathan Burkan.

I might suggest the striking out of the words "final" and "finally," so as to read:

"That the orders, judgments, or decrees of any court mentioned in section thirty-two of this Act, arising under the copyright laws of the United States, may be reviewed on appeal or writ of error in the manner and to the extent now provided by law for the review of cases determined in said courts respectively." (Copyright Hearings, December, 1906, p. 182.)

Sec. 33. Albert H. Walker,—Cancel "final" and "finally" and change "determined" to "pending," to read:

"SEC. 33. That the orders, judgments, or decrees of any court mentioned in section thirty-two of this Act arising under the copyright laws of the United States may be reviewed on appeal or writ of error in the manner and to the extent now provided by law for the review of cases *pending* in said courts respectively." (Copyright Hearings, December, 1906, p. 183.)

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Sec. 32, par. 5.

Sec. 33. Albert H. Walker.

If that section is amended by canceling the word "final," in line 24, section 33, and the word "finally," in line 3, on page 28, and amended by changing "determined," in line 4, page 28, to "pending," then the operation of the section will be to relegate this subject entirely to existing law in respect to appealable orders or any one appealable order, so that when the court is asked to grant an appeal or not grant an appeal, it will be directed by this section to look at the existing law. Whereas if the section stands as it reads here now, it will be considered that only final judgments or decrees in copyright cases shall be appealable, and the general law heretofore existing will be considered as being modified to that extent in copyright cases. (Copyright Hearings, December, 1906, p. 183.)

Sec. 33. Edmund A. Whitman.

Sec. 33 is drawn so as to exclude the present appeal as of right to the U. S. Supreme Court, which has always been enjoyed in copyright cases. Is there any good reason for this?

DEFINITE AMENDMENTS PROPOSED.

Sec. 34. Edward S. Rogers,—Change to read:

“SEC. 34. That no action shall be maintained for the recovery of damages as fixed by subdivisions one, two, three, and four of section twenty-three hereof, or for the seizure or impounding of goods alleged to infringe a copyright or of infringing copies, plates, molds, matrices, or other means of making such infringing copies as provided in subdivisions (c) and (d) of section twenty-three hereof, unless such action is commenced within three years after the cause of action arose; such limitation, however, shall not apply to any other action, suit, or proceeding for the protection of any right herein secured or the enforcement of any remedy herein provided.”

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Sec. 34. Print Publishers' Association (W. A. Livingstone, president).

We do not think that limitation of action should be restricted to three years. Still, we accept it, because we think it the best compromise that could succeed at this time. (Copyright Hearings, December, 1906, p. 99.)

Sec. 34. Edward S. Rogers.

Section 34 is as follows: "That no action shall be maintained under the provisions of this Act unless the same is commenced within three years after the cause of action arose." If it is intended to place an arbitrary three-year period of limitation on all copyright suits, this provision is highly objectionable. If it was intended simply to prevent the enforcement of any of the extraordinary remedies for seizure or for fixed damages under the acts, the provision is reasonable enough, but if this is its intention it is not indicated from the section as drafted. The word "action" has been held by the Supreme Court, in *Thompson v. Hubbard*, 131 U. S., 123, where used in one of the previous copyright acts, to mean all legal or equitable means of enforcing the rights conferred. Unless, therefore, it is the intention to leave the copyright proprietor without any remedy at all for infringement after the expiration of three years from the date when the cause of action arose, the section should be redrafted as follows: (See opposite.)

A section prepared in this way would leave the question of laches to the court to be determined under the circumstances of each case. This is the present rule and it has always worked satisfactorily. See *Encyclopedia Britannica Co. v. American Newspaper Ass'n*, 130 Fed., 460, where a preliminary injunction was granted after a delay of fourteen years.

In *Gilmore v. Anderson*, 38 Fed., 46, there had been a delay of six years.

In *Hogg v. Scott*, 43 L. J. Ch. 75, L. R. Eq., 144, there was a delay of five years with knowledge. This was held not to constitute laches.

See also *Myers v. Callahan*, 5 Fed., 726.

DEFINITE AMENDMENTS PROPOSED.

Sec. 34.

SUGGESTIONS AND CRITICISMS NOT ACCOMPANIED BY DEFINITE
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Sec. 34. Edward S. Rogers—Continued.

The probabilities are that the liberal rule announced by the Supreme Court in *McLean v. Fleming*, 96 U. S., 245, a trade mark case, would be extended to copyright cases. In that case there was a delay of over forty years with knowledge. The court deprived the complainant of an accounting of the profits, but granted an injunction. The same liberal rule was announced in *Menendez v. Holt*, 128 U. S., 514, 523; *Consolidated Jar Co. v. Thomas*, F. C. 3131, and many other cases which might be cited.

In trade mark matters the federal courts have taken the position practically that there is no such thing as laches and acquiescence, which will prevent the issuance of an injunction, and that an infringement known and acquiesced in is no more than a revocable license and lasts no longer than the silence from which it springs, and consequently the license can be revoked and the infringement put a stop to at any time. These cases are cited not as controlling or with the idea that they would have any control at all or any effect if an arbitrary limitation of three years were inserted in the proposed law, but to show that the establishment of a period of three years or any fixed period whatever, as far at least as the equitable remedy is concerned, would be a radical departure from the rule well established in this country, as evidenced by well-considered judicial decisions extending over a long period.

An arbitrary limitation period of three years for all actions would frequently work great hardship. An infringement might be carried on without the copyright proprietor's knowledge and not be discovered by him until after the expiration of three years. He would, under the terms of section 32 as drafted in the proposed bill, be remediless. A crafty infringer might circulate piratical copies in a surreptitious and limited way, purposely keeping his piracy from the knowledge of the copyright proprietor for three years, and if he succeeded in evading a suit for this period he could thereafter infringe openly and without penalty. This section of the proposed Act would put a premium on such practices. A proprietor might refrain from suing out of an honest

DEFINITE AMENDMENTS PROPOSED.

Sec. 34.

Sec. 36. Edward S. Rogers.

In section 36 should be inserted after the word "copyright," in the third line, the following: "Or any violation of literary, artistic, or other intellectual property," so that the section will read: "That nothing in this Act shall prevent, lessen, impeach, or avoid any remedy at law or in equity which any party aggrieved by any infringement of a copyright *or any violation of literary, artistic, or other intellectual property* might have had if this Act had not been passed."

SUGGESTIONS AND CRITICISMS NOT ACCOMPANIED BY DEFINITE
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Sec. 34. Edward S. Rogers—Continued.

ignorance of his rights; if he discovered them after three years he would be remediless. One infringer might, through the proprietor's ignorance or otherwise, escape suit during the three-year period; another infringer of whose piracy the proprietor learns is sued within the period and enjoined; the first infringer is immune and cannot be stopped; this is not fair to the second pirate, who has been enjoined, and it gives the old offender an advantage. In my judgment there should be no fixed period of limitation as applied to anything, but the fixed damages or the seizures provided, but if it be decided that a fixed period of limitation of all actions is desirable it should certainly be for a longer period than three years. With respect to suits for injunction and actions for actual damages, the burden should be on the infringer, who claims a prescriptive right to steal another's intellectual property, to show knowledge and acquiescence on the part of the copyright proprietor. A claimant of title by prescription to real property is required to show open and notorious adverse possession for a long period, and it would seem that the literary trespasser should be in no more advantageous position.

DEFINITE AMENDMENTS PROPOSED.

Sec. 38. American (Authors') Copyright League,—
Change to read:

"Sec. 38. That the right of translation, the right of dramatization, the right of oral delivery of a lecture, the right of representation in the case of a dramatic composition, the right of performance in the case of a musical composition, where the latter is reserved, as provided in section fourteen hereof, the right to make *any form of musical record*, and the right of reproduction of a work of art or of a drawing or plastic work of a scientific or technical character, *or any other separable right*, shall each be deemed a separate estate, subject *each, in whole or in part*, to assignment, lease, license, gift, bequest, or inheritance." (Copyright Hearings, December, 1906, p. 402.)

Sec. 38. Edward S. Rogers.

In section 38, in the fourth line, the expression "the right of performance in the case of a musical composition," I think, should be changed to read "the right of a public performance in the case of a musical composition," in order to follow the language of section 14. The section to read:

"SEC. 38. That the right of translation, the right of dramatization, the right of oral delivery of a lecture, the right of representation in the case of a dramatic composition, the right of *a public performance* in the case of a musical composition, where the latter is reserved, as provided in section fourteen hereof, the right to make any mechanical device by which music may be reproduced to the ear, and the right of reproduction of a work of art or of a drawing or plastic work of a scientific or technical character shall each be deemed a separate estate subject to assignment, lease, license, gift, bequest, or inheritance."

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Sec. 38.

DEFINITE AMENDMENTS PROPOSED.

Sec. 40. Edward S. Rogers.

Section 40 provides "That every assignment of copyright under this Act shall be by an instrument of writing signed by the assignor." I think this should be changed to read as follows: "That every assignment of copyright under this Act shall be by an instrument of writing signed by the *proprietor of such copyright*." Any assignment to pass title should be signed by the proprietor of the property sought to be transferred. The terms "assignor" and "proprietor" are not necessarily synonymous.

Sec. 45. Geo. W. Ogilvie,—Insert the word "not," to read:

"Sec. 45. That when an assignment of the copyright in a specified book or other work has been recorded the assignee shall *not* have the privilege of substituting his name for that of the assignor in the statutory notice of copyright prescribed by this Act."

Sec. 52.

SUGGESTIONS AND CRITICISMS NOT ACCOMPANIED BY DEFINITE
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Sec. 40.

Sec. 45.

Sec. 52. Advertising Clubs of America (Hugh K. Wagner).

Under the present law, the Librarian of Congress and the Register of Copyrights are what are known in law as mere ministerial officers. That means that they have no discretion in the performance of their official duties, and that it is their duty to record in their office in a set form of words any claim of copyright that is forwarded to them. The Librarian of Congress and the Register of Copyrights have no authority to pass upon the copyrightability of anything presented to them, but it is their duty, as ministerial officers, to make the record without question. The new law changes the character of these officers, so that they will no longer be merely ministerial officers, but will be authorized to supervise the so-called applications for copyright, which will result in vastly increased expense in obtaining copyright protection, making it practically as expensive as to obtain a patent.

DEFINITE AMENDMENTS PROPOSED.

Sec. 63. Edward S. Rogers.

In section 63, after the word "sale," in line 5, should be added "or publicly distributed by the proprietor of the copyright or under his authority," so that the section will read: "That in the interpretation and construction of this Act 'the date of publication' shall in the case of a work of which copies are reproduced for sale or distribution be held to be the earliest date when copies of the first authorized edition were sold or placed on sale *or publicly distributed by the proprietor of the copyright or under his authority.*" The words "publicly distributed" should, I think, be inserted; otherwise works intended for gratuitous distribution would never under the terms of the Act be published, and the phrase "by the proprietor of the copyright or under his authority" should be added to prevent an unauthorized distribution even of authorized copies imperiling the proprietor's rights.

Sec. 63. G. Howlett Davis.

As an amendment to the bill I urge the cancellation of Sec. 1 (g) and of all other words, clauses and paragraphs which include mechanical devices, and as a substitute therefor—preferably to appear at the end of the bill—the following:

"Provided, That the expression 'works' shall not, for the purposes of this Act, be deemed to include perforated music rolls used for playing mechanical instruments, or records for the reproduction of sound waves, or the matrices or other appliances by which such rolls or records respectively are made." (Copyright Hearings, December, 1906, p. 269.)

Sec. 63. Print Publishers' Association of America (Wm. A. Livingstone, president).

In line 5, insert before the word "distribution" the word "public." In line 7 add after the word "sale" the words "or publicly distributed," to read:

"SEC. 63. That in the interpretation and construction of this Act "the date of publication" shall in the case of a work of which copies are reproduced for sale or *public*

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Sec. 63. Print Publishers' Association of America (W. A. Livingstone, president).

Sec. 63. If you will turn to section 63, line 5, on page 39, before the word "distribution" we would suggest the insertion of the word "public," because there is a private distribution, a limited distribution.

In the 7th line, after the word "sale" we would suggest the insertion of the words "or publicly distributed," because American subjects are publicly distributed and are still never placed on sale.

We think that while an attempt to define the word "publication" as a whole would be very difficult, yet a definition of the date of publication is very easy, and this section as it would read with these proposed amendments would make a perfectly safe line of demarkation, which anybody could understand and which would avoid many of the troubles now existing.

We protest against any definition of either the word "publication" or the phrase "date of publication" which might render a work of art published before any authorized vending or public distribution of copies of the work. Exhibition should not be construed as publication. Paintings are frequently exhibited in galleries and elsewhere before arrangements can be made for copying them. The United States court of appeals, even under the present law, has decided that exhibition is not necessarily publication. The only safe point of demarcation for the date of publication is the date upon which authorized vending or public distribution of the copies commences. Any other rule produces injustice and confusion. If publication commences before the date specified in the bill, then artists will be compelled to copyright their works before daring to show them to the public in any way. Such a condition would, as it sometimes does now, cause the loss of the copyright. (Copyright Hearings, December, 1906, pp. 101, 102, 106.)

DEFINITE AMENDMENTS PROPOSED.

Sec. 63. Print Publishers' Association of America—
Continued.

distribution be held to be the earliest date when copies of the first authorized edition were sold or placed on sale *or publicly distributed*; and the word "author" shall include an employer in the case of works made for hire." (Copyright Hearings, December, 1906, p. 110.)

Sec. 64. P. H. Cromelin,—Omit from the bill section 64 and substitute in lieu thereof the following:

"SEC. 64. That in the interpretation and construction of this Act the words 'production,' 'reproduction,' 'work,' or 'writing' shall not be deemed to include perforated music rolls used for playing mechanical instruments, records used for the reproduction of sound waves, or other mechanical devices designed for the production or reproduction of sound, or the plates, molds, matrices, or other means by which such mechanical devices are made." (Copyright Hearings, December, 1906, p. 384.)

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Sec. 63.

Sec. 64.

American Publishers' Copyright League (George Haven Putnam, secretary).

I take this opportunity of stating that we are in accord with the suggestions submitted some time back in an individual communication from Mr. W. W. Appleton in regard to the use of the term in any division of the bill "authorized edition." The proper term should be "edition authorized for the United States."

The distinction that it seems to us essential to secure in a permanent copyright statute is that which obtains in Great Britain in the case of publications like the "Tauchnitz Series." This Tauchnitz series, "authorized" for the continent, is not "authorized" for Great Britain, and the importation of copies of the Tauchnitz Series of English authors into Great Britain is, under the law, as much "piracy" as the importation of editions printed without the authority of the author. Under the wording of the existing United States statute, volumes in the Tauchnitz Series presenting the works of American authors are, however, open for importation into the United States.

DEFINITE AMENDMENTS PROPOSED.

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George W. Ogilvie.

I think there should be a "certificate of probable cause for action" from the Copyright Office before a suit should be started.

I think that no *printer* should be held responsible for printing (piratically) copyright matter unless it be shown that he did it with knowledge.

I believe that no action should be permissible against retail or other booksellers for infringement except after action had been taken against the publisher and it had been determined that the book is an infringement.

I also believe that no one should be permitted to "trade-mark" a title of a book—the contents of which are not copyrighted.

Charles H. Walsh.

I respectfully beg to submit for your consideration the following suggestions for incorporation in the proposed revision of the Copyright Laws.—All publishers of prints issued in limited editions be offered the opportunity of registering these limited editions under seal of the Library of Congress, stating the limitation.

Also, booksellers and publishers be granted the same privilege for all editions printed in limited editions. The seal to be stamped upon the title-pages of these publications.

DEFINITE AMENDMENTS PROPOSED.

SUGGESTIONS AND CRITICISMS NOT ACCOMPANIED BY DEFINITE
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Edmund A. Whitman.

My principal general criticisms are two: First, lack of definiteness as to what the requirements for copyright are; and, second, lack of definition of the word "book."

My conclusions, therefore, from the first part of the Act are these, in brief:

(1) All that is necessary to acquire copyright is to publish with notice of copyright in the first edition.

(2) That while the Act calls for the deposit of copies in Washington, there is no penalty for failure to deposit except a small money fine, and except that within the first year suit cannot be brought until the deposit is made.

(3) Subsequent editions must have a copyright notice; but there seems to be no penalty provided for failure to insert it, and the courts will not infer a penalty from the last paragraph of Sec. 15.

(4) It is expected that the books and periodicals shall be printed from type set within the United States, but there is no penalty for not doing so. In the case of a book only there must be an affidavit filed, and the penalty for a false affidavit is a fine of not more than \$1,000, and if the copyright proprietor is foolish enough to make a false affidavit he may lose his rights under the copyright, but if he gets his printer to make it nobody is injured if he pays the fine.

(5) None of this is true in regard to foreign books, for Sec. 17 provides that all these requirements shall be conditions precedent to the vesting of copyright.

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